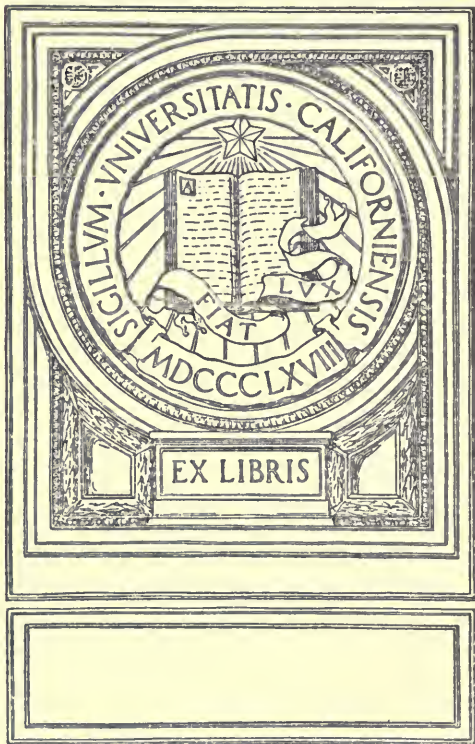


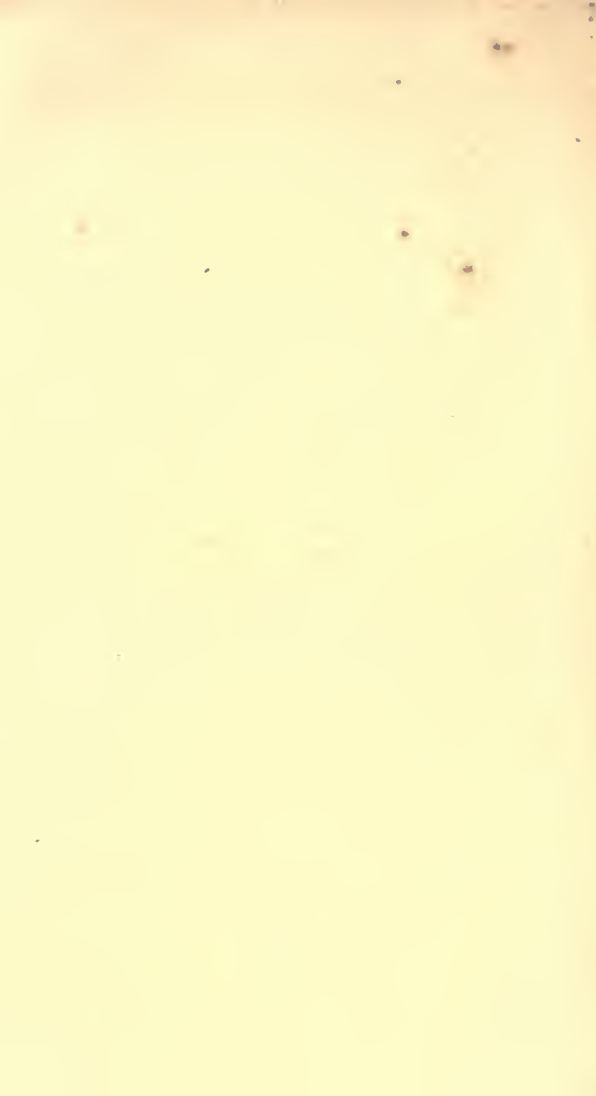
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MEMOIRS
OF
CHARLES LEE LEWES,
COMEDIAN.



VOL. IV.

ADDITIONAL TO THE
ADDITIONAL TO THE

MEMOIRS
OF
CHARLES LEE LEWES,
CONTAINING
ANECDOTES,
HISTORICAL AND BIOGRAPHICAL,
OF THE
ENGLISH AND SCOTTISH STAGES,
DURING A PERIOD OF FORTY YEARS.

WRITTEN BY HIMSELF.

IN FOUR VOLUMES.
VOL. IV.

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MEMOIRS

OF

CHARLES LEE LEWES, Esq.

EDINBURGH THEATRE,

(*Continued.*)

IN a few days afterwards, (viz. February the 7th 1793) Mr. Kemble presented the following petition to the Lords of Council and Session.

S. KEMBLE AGAINST LORD SWINTON'S
Interlocutor.

JAMES GIBSON, W. S. AGENT.

The Petition of STEPHEN KEMBLE, Manager
of the New Theatre of Edinburgh ;

Humbly sheweth,

THAT the petitioner submits to review an interlocutor, pronounced to your lordships, by Lord Swinton, ordinary of the bills, of the greatest importance to his own patrimonial interest, to the

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public of Edinburgh, and as a precedent, to the law of the country.

By the interlocutor thus pronounced, the creditors of Mr. Jackson, and through them Mrs. Esten, who has authority from the Duke of Hamilton, one of the patentees of the Edinburgh theatre, has obtained by summary process an interdict against the petitioner, who has an equal authority from the other patentee Mr. Dundas, prohibiting and discharging him in the mean time, and before the rights of the parties be fully discussed, from presenting entertainments of the stage to the public, while Mrs. Esten herself is left at full liberty to do so.

What must be the immediate consequences of this interlocutor to the petitioner,—after all the expence he has incurred,—all the preparations he has made,—and all the performers he has engaged, need not be suggested to your lordships : neither need you be told, that the same cruel effects could not have followed to the other party, although your lordships had refused the interdict which was prayed for ; although you had granted the interdict craved by the petitioner, which was not, as erroneously imagined, to stop the performances at the other house, but only to prevent molestation to the petitioner in his own.

But however hard the case may be, and the petitioner had the consolation to hear his situation lamented by some of your lordships; who, nevertheless, considered yourselves as bound in justice to decide against him; still, if the creditors of Mr. Jackson, and Mrs. Esten, their lessee, have a clear right, your lordships, without attending to consequences, will render that right effectual, and prevent every encroachment upon it; and if they are in possession, you will no doubt maintain them in it, until they are turned out by due course of law.

This point, however, the petitioner humbly begs leave to contest, and he has some confidence that he will be able fully to convince your lordships that there is not the smallest ground or pretence in this case for a possessory judgment; and he hopes that his argument upon this head will meet with the more attention, and that in former papers, the claim of possession, being considered as totally untenable upon the facts, was but slightly argued.

The petitioner is sorry to observe that the other party, finding they had every thing to gain, and nothing to lose, have conducted their cause accordingly, directing their whole attention to the

object of obtaining an interdict in the mean time, which was the ultimate end of their hopes, and, with submission, the only favourable judgment which they could expect in the cause. Instead, therefore, of giving in to your lordships a plain state of the case, instructed by evidence, they had recourse to different pleas, upon each of which, and on the question of possession in particular, they brought forward the boldest, but, at the same time, the most avouched averments.

: But in restating this case to your lordships, as the petitioner shall confine himself to facts which are sufficiently proved and authenticated, so he hopes that the other party will restrict themselves in the same manner; and he is confident that your lordships, if they do not think proper to follow his rule, will abstract entirely from your consideration every circumstance or assertion, however plausibly stated, which is not instructed, as it ought to be, by legal evidence in process.

As the general nature of this question must be fresh in your lordships' memory, you will be at no loss to see the scope and relevancy of the two following propositions, which the petitioner intends to maintain, and either of which, he shall submit, would be sufficient, *ad victoriam*, against the interdict, or possessory judgment which your

lordships have pronounced. He pleads, in the first place, that the patent, which is the title of the other party, is void and null, by not having passed the proper seal, and cannot be held as a lawful grant by his majesty, of the exclusive privilege which is claimed under it; and secondly, that supposing the patent to be complete and unexceptionable, the creditors of Mr. Jackson, and Mrs. Esten, their lessee, are not in possession of the exclusive privilege thereby conveyed. Having exhausted these two questions, the petitioner conceives, that it will be unnecessary to trouble your lordships at length, upon what you formerly heard so much, whether the Duke of Hamilton and Mr. Dundas hold a trust of any kind, either mixed or unmixed, for behoof of Mr. Jackson and his creditors? and the petitioner shall treat with equal neglect, several other extraneous discussions which have been introduced into the litigation.

As to the first, the petitioner must assume as a clear proposition, that unless the patent be a valid grant, that is, not only in the powers of the crown to convey, but, as to the mode of conveyance, executed in the manner particularly specified and prescribed by law, it is no better in its pre-

sent shape than a piece of waste paper, whatever cure its defect may afterwards admit of, and no possession of an exclusive privilege can be claimed under it. This objection does therefore likewise enter into the question of possession; for by a possessory judgment in this case, your lordships give the exclusive privilege conveyed by a patent. But if there is really no patent, though Mrs. Esten may possess a certain quantity of parchment and wax, it is impossible your lordships can find her intitled to the possession of an exclusive privilege. Had the writing which is called a patent been authenticated in no way whatever, or had it been *ex facie* not a patent, or had it been an old patent expired, as if a claim had been made upon the old patent, which was of no force after the year 1788, your lordships surely would not, upon such a title, have sustained possession of the exclusive privilege; for in such a case there could be no legal possession, and your lordships would hold it to be *vi, clam, aut precario*.

Nothing more is meant to be derived from this argument than that a title of some kind is absolutely necessary to maintain Mrs. Esten in her supposed possession; and if so, your lordships are next to enquire what title is necessary, and what is to be held as a valid and sufficient grant of the

exclusive privilege, of which possession is demanded. Before the year 1767, the petitioner's counsel know of no way in which it could have been conferred, but by act of parliament; for by the 10th Geo. II. c. 28. § 5. which was then the existing law, no person could be authorised, even by letters patent from the crown, or by licence from the chamberlain, to represent plays in any part of Great Britain, except in the city of Westminster, and in such places where his Majesty should reside, during such residence only. Supposing, therefore, that the question had occurred upon the law as it stood at that time, it is plain that no person could have pleaded an exclusive privilege of this kind, unless he could produce an act of parliament in his favour. It would have been to no purpose to say, that a bill had passed the two houses, but that by some mistake it had not received the royal assent; or that although it had not yet passed, it was passing, and might in a short time have all the force of a statute.

By the act passed in 1767, c. 27. § 19. his Majesty is authorised to grant letters patent for establishing a theatre in the city of Edinburgh, or suburbs thereof, which shall be entitled to all the privileges, and subjected to all the regulations

to which any theatre in Great Britain is entitled. Upon the law thus altered, a theatre may be erected in Edinburgh, and an exclusive privilege created; but as the way in which this may be done is expressly fixed by the statute, it is submitted that no other mode but that specified could be effectual, or could receive support from a court of justice. No power is granted to the Lord Chamberlain to give licences, nor no power to the justices of peace to that effect, as is done by late act, neither is the crown authorised simply to grant a licence or authority for building a theatre; but the very mode in which this power is to be exercised by the crown, is precisely limited and pointed out. His Majesty may grant letters-patent. Now what are letters-patent? For, unless it can be said that they have been granted upon the present occasion, it surely will not be contended, that any exclusive privilege has been effectually conferred.

That very earnest applications were made from different quarters, in order to obtain letters-patent, need not be disputed.—That various writings were drawn out and passed through different offices in London, with the view of getting a sealed piece of parchment, which was believed to be a patent,—that the favour of the crown was

so far obtained, that his Majesty, for ought the petitioner knows, might have consented to grant a patent, are propositions which the petitioner shall as little contest. But, with great submission, he maintains, that no patent was granted.

By the 24th article of the union it is provided, “ that from and after the union, there be one great seal for the united kingdoms of Great Britain, which shall be different from the great seal now used in either kingdom; and that the quartering the arms, and the rank and precedence of the Lyon king of arms of the kingdom of Scotland, as may best suit the union, be left to her majesty: and that, in the mean time, the great seal of England be used as the great seal of the united kingdoms. That the great seal of the united kingdom be used for sealing writs to elect and summon the parliament of Great Britain, and for sealing all treaties with foreign princes and states, and all public acts, instruments and orders of state, which concern the whole united kingdom, and in all other matters relating to England, as the great seal of England is now used. And that a seal in Scotland, after the union, be always kept and made use of in all things relating to private rights and grants, which have usually passed the great seal of Scotland, and which only concerns offices,

grants, commissions and private rights, within that kingdom ; and that until such seal shall be appointed by her majesty, the present great seal of Scotland shall be used for such purposes ; and that the privy seal, signet, cashet, signet of the justiciary court, quarter seal, and seals of court, now used in Scotland, be continued ; but that the said seals be altered and adapted to the state of the union, as her Majesty shall think fit ; and the said seals, and all of them, and the keepers of them, shall be subject to such regulations as the parliament of Great Britain shall hereafter make.”

It is submitted, that the law is here precisely pointed out, and the letters-patent founded on ought, and in the terms of the union, to have passed the great seal which has been kept in Scotland ever since that time, and constantly used in every grant of this nature. But the fact is, that the piece of parchment which is called a patent, never was authenticated by passing through any public office whatever in Scotland ; but, being mistakenly supposed to be of the nature of an English grant, appears to have passed the great seal of Great Britain, which is exclusively appropriated for the purposes set forth in the above clause, and in other matters relating to

England only, "as the great seal of England was then used." A very few observations will shew your lordships, that the royal will expressed in this manner, cannot have the effect of letters-patent in Scotland.

The form of every deed must evidently have been originally, as it is in its own nature, entirely arbitrary, and there is hardly one form which deserves, *a priori*, to be preferred to another.

The same observation may be made as to the evidence of its authenticity, unless indeed it may be said, that it is expedient that such marks of authenticity should be fixed upon as cannot be easily counterfeited. But whatever opinions may be entertained as to the point of expediency, it must be admitted, that the marks or evidence of a writing being the deed of the party have always been fixed and settled, either by statute or by custom; and this being the case, it seems to be altogether indifferent to the point before your lordships, whether a seal, a subscription, or any other requisite were held as legal evidence of the grant. Whatever be the legal evidence, it is statute or custom fixes it, and certainly the petitioner could not dispute, that if statute or custom had authorised his Majesty to grant this patent by a letter under his royal hand, sent in course of post, the

same would be valid and sufficient to all intents and purposes.

But not such is the law of this country ;— which in order to guard the crown from the numberless attempts of interested persons to which it is exposed, has rendered it necessary that every grant whatever, and those of this kind in particular, should undergo the inspection of men in high offices, deeply skilled in the laws, and of integrity above all corruption ; and hence it is a settled point, that as to the very grant in question, the most unequivocal proof of the royal will, unless accompanied with the accustomed evidence that it had been inspected and approved of by persons to whose office this properly belonged, cannot be regarded by your lordships as a legal right.

Now the petitioner, with great submission, begs leave to deny that any evidence of this kind is before your lordships, or indeed that any other can be regarded as the legal, true, and customary evidence of the fact, but the great seal of Scotland. For unless that seal be appended to the grant, it cannot be pretended that it has been duly examined by the persons who have been entrusted by his Majesty and the laws for that purpose. No doubt a certain degree of respect is due to every writ which has passed the great seal of Eng-

land ; but if the Lord High Chancellor is not the person specially appointed by the law and custom to authenticate such a grant, he has exceeded his powers in so doing, and his act can be attended with no authority or effect whatever.

Besides the terms of the union act, which is very express, confining the use of the great seal of Great Britain to certain public acts relating to the whole united kingdom, and to matters of private right in England, and specially appointing the great seal of Scotland to be used in all grants whatever in that kingdom, your lordships will receive additional light upon this subject by attending to the nature of the Lord Chancellor's office, as keeper of the great seal of Great Britain. The seal is evidence of the King's will, and the only legal evidence of it in certain cases, as formerly explained. The keeper of the seal therefore has to determine whether he ought, in any given case, to append the seal, or to refuse it, and apprise the Sovereign of the objections against it, and particularly of those objections which may be founded on its illegality. But your lordships have already seen that the writs which pass the great seal of Great Britain are only of two kinds, the first being public acts and instruments, and the second in the terms of the act of union, respecting " matters relating to England, as the great seal of Eng-

land was then used ;” as to which last, though the great seal of Great Britain does not come in place of the great seal of Scotland, which is otherwise expressly provided for, yet your lordships see that it comes exactly in place of the great seal of England as to private grants, and accordingly the old great seal of England has ever since been out of use ; and your lordships were told from the other side of the bar, that it was even actually destroyed, while the great seal of Scotland has always been used in terms of the union act, and, as your lordships will afterwards see, particularly used in such grants as the present.

As keeper of the great seal of Great Britain, therefore, the Lord Chancellor has no inspection or interference whatever with matters of private right in Scotland, and your lordships will perceive that it would be very improper if he should. That great officer is undoubtedly presumed to be fully able to advise the crown upon all matters of state, and particularly with those which come before himself in his office of keeper of the great seal. He is likewise the head of the law of England, with a most extensive jurisdiction in that country, though with none in Scotland ; and therefore, no person whatever is so fit to judge of the legality of English grants. But as to Scot-

land, there he has no jurisdiction, and is not to be presumed from the duties annexed to his office, to be better acquainted with our law than any other peer. To advise the crown in matters of state, relating to the general or political welfare of the empire,—to exercise the jurisdiction of the Court of Chancery,—and to determine upon the legality of English private grants, are duties but little connected with the municipal law of Scotland. With submission, therefore, it does not appear to be a natural office to impose upon the keeper of the great seal of England, to advise the crown as a lawyer, whether a certain private Scottish grant is agreeable to the forms, customs, or statutes, particularly belonging to that country; and it would be the more awkward from this, that our law and constitution has already most anxiously provided for the Sovereign other advisers upon the same subject, who are well qualified for that duty, and who from time immemorial have been in possession. For the petitioner does most confidently assert, that excepting the former patent now expired, this is the only instance of such a patent passing the great seal of England, and in both cases it must have been from the ignorance or mistake of those who had the charge of the business.

But your lordships will attend to a conclusion, which, in the petitioner's humble apprehension, evidently results from what he has stated as matter of law, with regard to the great seal of England. If that seal, by special statute, is only appointed for certain purposes, and if the keeper thereof is only authorised to use it for those purposes, viz. in public acts and instruments, and in private English grants, it is impossible, with submission, that the great seal can be held as evidence of the royal will upon any other subject. That there is no objection whatever to this patent, were it to be called a public act of state, or a private English grant, the petitioner has no occasion to dispute; because upon both of these subjects the King speaks and signifies his will by the great seal of England; or, as it is called, of Great Britain: but, on the other hand, as to Scots grants, it is not that species of evidence which the law requires. Just as a bond objected to for want of the solemnities, could not be validated by the parole evidence of a hundred witnesses; so it is apprehended, that the legal solemnity of the Scots great seal could not be supplied by that of England, or indeed by any other means whatever. The matter, however, does not even rest here; for it may be observed, that where a patent

passes the great seal of Scotland, it is not only presumed, but the fact actually is, that it has been canvassed and examined by different persons in official situations for the security of the crown of Scotland ; and that it has been found to be agreeable to the law of this country : but where a patent has passed the great seal of England, this can neither be presumed, nor is it the fact ; for, on the contrary, it passes through the hands of different persons there, who, without considering at all whether it is agreeable to the law of Scotland, of which they have no knowledge, give their whole attention to a point which is totally different, at the same time that it is of no earthly importance in itself, viz. whether the patent is agreeable to the law of England ? How inconsistent, how absurd ! because there is nothing in the patent contrary to the law of England, his Majesty may legally grant it to take effect only in the City of Edinburgh.

Whatever weight may be due to this reasoning, it is founded upon the most indisputable facts ; and that your lordships may see how far this is the case, the petitioner shall enter farther into the detail. When a patent is applied for, to take effect in Scotland, a petition is first of all presented

to the King, setting forth the pretensions of the party, and the grounds upon which he claims an exclusive privilege. Upon this petition a deliverance is made in writing, remitting it to the Lord Advocate for Scotland, to report his opinion how far it is agreeable to law, or ought, from other circumstances, to be granted. Any person having an interest may oppose it; but the proper way to do so is of no importance to your lordships. If the Lord Advocate's report is favourable, a warrant for a patent is superscribed by the King, and countersigned by the Secretary of State for the home department. The warrant contains, *in gremio*, authority to expedite the letters-patent under the great seal of Scotland; and after undergoing the forms of chancery, and of being extended upon parchment, then it is deposited in the keeper of the great seal's office, as a part of the record upon which the letters-patent were granted, and the great seal is appended to them, and the right is complete.

Now, your lordships will observe, how different the steps are which conduct a patent through the great seal of England, and which, as they are necessary to every patent, must undoubtedly have been followed as to the patent in question. Judge Blackstone tells us, B. 2. c. 21. p. 346.

“that grants, or letters-patent, must first pass by bill, which is prepared by the attorney and solicitor general, in consequence of a warrant from the crown, and is then signed, that is, superscribed at the top with the King’s own sign-manual, and sealed with his own privy signet, which is always in the custody of the principal Secretary of State; and then sometimes, it immediately passes under the great seal, in which case the patent is subscribed in these words, *per ipsum regem*, by the King himself! otherwise, the course is to carry an extract of the bill to the keeper of the privy seal, and the privy seal is the warrant to the great seal; and in this last case, the patent is subscribed, *per breve de privato sigillo*, by writ of privy seal. But there are some grants which only pass through certain offices, as the Admiralty or Treasury, in consequence of a sign-manual; without the confirmation of either the signet, the great, or the privy seal.”

It would be very unnecessary to enlarge upon the absurdity of supposing, that the patent could in the above progress be purified from such objections to it as arose from the law of Scotland. But in the case before your lordships, the patent must have taken the same course, only it appears

to have originated in the Lord Chamberlain's office, from whence, by a route similar to that above described, it arrived first at the privy seal, and after at the great seal. And it bears evident marks of its birth and parentage, for your lordships will find in it a most anxious clause, prohibiting all representations to the church of England; but although the patent was to take effect in Scotland, and our national religion accordingly might have met with some little compliment, the kirk is not so much as mentioned from the beginning of the patent to the end of it. This cannot be regarded by your lordships as a circumstance altogether trivial. With submission, it was a high and shocking indecency to pass a grant in name of the crown, by which his Majesty was made to insult the people of Scotland by such an absurd *proviso*. The petitioner indeed believed that the patent, originally copied *verbatim* from a similar one drawn up for one of the London theatres, and no doubt attentively examined at first by the Attorney and Solicitor General of England at the time, as a grant to take effect in England, and consequently it might be duly considered, whether or not it was agreeable to the English religion, laws, and manners; but it contains, *in gremio*, the most complete evidence, that it never was examined as

a Scots grant ; and, with great submission, the petitioner is entitled to say, that if it had been so examined and submitted to the inspection of those persons in official situations, appointed by law for that purpose, it would not have appeared in the words which it now contains.

If it be said, which the petitioner hardly can suppose, that this is all matter of form, and that it is of no real consequence through what public offices the patent is carried, if it be certain that the grant was intended : or if it be said that no such very strict examination, as the petitioner has founded on, is given to either English or Scots grants, and in particular when they come the length of the seals it is very much a matter of course : the petitioner does, with great submission, maintain that this is not the language of the law, and cannot be listened to by your lordships. And what would this argument lead to, but the most absolute confusion of forms and solemnities in all public grants, and in particular to an absolute disregard of the most strict and solemn of all our statutes, the act of union with England, which is daily appealed to as the great charter of the Scots, and contrary to which even laws and statutes are positively declared, by 25th article of

the treaty, to be to all intents and purposes null and void. But the petitioner apprehends that the principles which he has laid down, from which the different seals have derived their authenticity, are so completely well founded in common sense, as to be absolutely incontestible, and, indeed, after that part of the paper was written, he found an authority in Judge Blackstone, precisely coinciding with his ideas upon that subject. That learned author observes, B. 2. c. 21. p. 346. "that a variety of offices are erected, communicating in regular subordination one with another, through which all the King's grants must pass, and be transcribed and enrolled, that the same may be narrowly inspected by his officers, who may inform him if any thing contained therein is improper or unlawful to be granted. These grants, whether of lands, honours, liberties, franchises, or aught besides, are contained in charters or letters-patent, &c." If such, therefore, is the principle upon which the different offices are established, and upon which the different seals, and in particular the great seal, are necessary solemnities, it can no longer be doubted that the great seal of England, implying a progress through the different English offices, must be altogether

without authority as to letters-patent to take effect in Scotland.

When a point of law is clearly proved from statute, as well as demonstrated upon the principles of justice and consistency, it may be reckoned superfluous to seek assistance from the practice; but as the point is of infinite consequence to the petitioner, and it cannot weaken the conviction of your lordships, he begs leave to say, that the law upon this head has all along been universally understood. The petitioner means the law with regard to letters-patent; for your lordships have already been informed that the only theatrical patents hitherto known in this country were passed in a manner entirely peculiar to themselves. The petitioner then avers it to be notoriously known to every man of business in this court, that wherever a patent is intended to extend to Scotland, besides the application to the crown, which is considered officially by the Attorney and Solicitor General, and afterwards passed the great seal of Great Britain, there is a separate petition to the King, which is remitted to the Lord Advocate in the way above stated, and is conducted in the manner above described to the great seal of Scotland. In effect, there are

two patents, and this is found to be just as necessary, as if an exclusive privilege were sought to be obtained in Ireland or any foreign country. And what is there surprising in all this, or rather would it not be extraordinary if it did not take place? England is united to Scotland merely to prevent the trouble to the lieges of sending their rights to London, to be sealed there. To suppose that this was the case, is totally inconsistent with every thing that is known of the union, or of the respective laws of Scotland and England. But still, were it true, *ita lex scripta est*, whatever was the inductive cause; and if it was thought necessary to insert this special clause of the treaty of union, your lordships will certainly pause upon using a discretionary power contrary to the provisions of that treaty. The words are express and unambiguous, and cannot permit of the great seal of England being used to convey a Scots grant in any circumstances whatever.

As little founded was an idea, that the great seal of Great Britain, like the *majus*, comprehends in itself all the authority possessed by the great seal of Scotland, as the *minus*. Your lordships have already seen, that whether they are different in degree or not, they are unquestionably different in kind; and those who have the custody of

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them have duties entirely different to perform, and grants founded upon different systems of law to approve of. Just as well might it be said, if such a blunder could for a moment be supposed, that the great seal of Scotland might be used instead of the signet; or that a man may be put to the horn, inhibited, or imprisoned, by letters under the great seal. This innovation, however violent or absurd, would not, in the petitioner's humble apprehension, be so entirely contrary to all principle as that which has been practised in the present case. Could it really be argued seriously, that a crown-charter of lands in Scotland could pass the seals in England, and convey the right in an effectual manner, upon the report of the Attorney and Solicitor General? It will surely be admitted that the jargon of every public office in England, with all their seals, caskets, and signets, could not have the smallest effect in a right of that kind; and yet the petitioner must confess that he is entirely at a loss to see any material distinction betwixt that case and the present. It is in vain to have recourse to a crown-grant of any other description; for every one of these, without exception, must pass the Scottish seals before it will be allowed the smallest effect. This, it may be observed, is more particularly known in the

court of exchequer; and the petitioner affirms it as a fact in which he may be easily contradicted, if it be otherwise, that there is not one crown-grant of any description now existing and in force in Scotland, whose warrant has not passed the proper seals in Scotland for that effect; and he will farther defy the other party to produce another instance of the contrary but their own. The commissioners of customs and excise are all named in one commission for each board passing the great seal of England; the reason of which is, that the revenue laws of England were extended to Scotland by the act of union, and every department of the revenue being dependent upon the board of treasury, the same system was established for the whole: thus this exception is founded on the union itself;—a circumstance which gives force ten-fold to the preceding argument.

Now your lordships will please to apply all this to the question of possession. And here the petitioner shall take for granted what certainly is not true, that Mr. Jackson, and through him Mrs. Esten, have, till now interrupted, been in possession of an exclusive privilege upon the patent, defective, as it has been stated to be, in so far as such a right could give a legal possession. A legal possession, as your lordships know, is held

nec vi, nec clam, nec precario ; and it must be something curious to the petitioner, and even incomprehensible, that shall establish them to have had a possession of this sort.

If to claim and assert an exclusive right for years together in the face of a statute, containing a direct and positive prohibition, not only against the exclusive exercise of it at all, will confer a legal possession, Mrs. Esten certainly may pretend to such possession ; but the humble capacity of the petitioner cannot discover any thing better in it than a possession *vi*.

If to give out that a patent had been obtained from the crown in full and ample form, and under this pretence, without discovering the title, till forced at last by necessity, when it is found to be absolutely void and null, confers a legal possession, Mrs. Esten certainly has such possession, but the petitioner in his own case would have thought it a possession *clam*.

If to maintain possession of this exclusive privilege, not as tenant at will of the Duke of Hamilton and Mr. Dundas, of which in the sequel, but literally and truly as tenant at will of every man in the kingdom, who might chuse to shut up the theatre by a complaint for the penalties, is a legal

possession, Mrs. Esten certainly has this title; but the petitioner, with great submission, holds it to be a possession *precario*.

In short, the question is here simply this, whether is the patent good or bad? If it is bad, the theatre may be shut up to-morrow, and the petitioner is confident that Mrs. Esten will not be so absurd as to talk in her answer, of possession upon a bad patent. There is no chicanery, no legal ingenuity, or rather disingenuity, sufficiently subtle or confounding to have the smallest effect upon a rational mind, upon such a question as this; and therefore the petitioner, without troubling the court with any farther discussion of it, shall conclude with one single sentence from Judge Blackstone, B. 2. c. 21. p. 348. "When it appears from the face of the grant, that the King is mistaken or deceived, either in matter of fact or matter of law, as in case of false suggestion, misinformation, or misrecital of former grants, or if his own title to the thing granted be different from what he supposes, or if the grant be informal, or if he grants an estate contrary to the rules of law, in any of these cases the grant is absolutely void."

Upon the second point before your lordships,

viz. supposing the patent to be valid and sufficient, whether Mr. Jackson's creditors, or Mrs. Esten in their right, have a legal possession, the petitioner shall be equally cautious, as he has hitherto been, to advance nothing as matter of fact that is not proved by the record ; and he hopes that Mrs. Esten in her answer will be equally candid, at least that your lordships will follow her no farther in her argument, than in so far as it is founded upon legal evidence. In a question of this kind, if parties are allowed to embark in a sea of allegations, it is difficult to prevent these from being confounded with the real facts, and equally difficult to form an impartial judgment on the cause.

The petitioner is humbly confident that the notion of Mr. Jackson or his creditors being in possession of this patent, is entirely inconsistent with the best established facts in the case, and is agreeable to nothing which has been proved by the smallest shadow of evidence on the other side. Indeed the petitioner, in his former papers, was so little apprehensive upon this point, and it was urged so faintly, and with small apparent hopes of success by Mrs. Esten, that although it was the point, without regard to other circumstances, upon which your lordships took up the question, it was only touched on in the slightest manner in

two short paragraphs of the memorial, the rest of that paper, and the minute, being entirely filled up with other topics, which, though not absolutely necessary to the question of possession, the petitioner considered it as highly proper to introduce in the earliest possible stage of the cause. For this reason, your lordships may consider the following argument as the first which you have seen upon the petitioner's part, in so far as regards the interdict.

It occurred to the petitioner, that the question of possession was not considered entirely in one point of view, but, on the contrary, that several distinct grounds seemed to have an influence upon the opinion which might be entertained concerning it; and this of itself is extremely hard upon the petitioner, and would justify a much severer reprehension than he has given to the unfounded averments on the other side, which have been mixed and served up to your lordships along with the facts, in such a way, that it is difficult to discern the truth from the falsehood. The operation of this circumstance must necessarily be much greater, where several grounds of law are started, each of which may possibly catch the attention, and thus effect collectively what they would never have been able to accomplish singly.

The grounds to which the petitioner now alludes were three. First, It seems to be supposed, that in consequence of a trust held by the Duke of Hamilton and Mr. Dundas, of a kind so anomalous as to defy all the lawyers ancient and modern, either to define or comprehend it, Mr. Jackson had in his own proper person held the possession of the patent right, and was entitled in a question even with the nominal patentees, as they were called, to a possessory judgment. Secondly, It seems to be supposed that Mr. Jackson, at any rate, had obtained the possession of the patent right from the two honourable persons to whom it belonged, whether in trust or otherwise; that he continued that possession, or at least his creditors; and Mrs. Esten did so down to the present hour, and could not be compelled to quit it until he was dismissed by authority of both the patentees; and thirdly, it was maintained upon the footing of Mr. Playfair's declarator, that Mrs. Esten having obtained the full consent of the Duke of Hamilton, along with a *non repugnantia* on the part of Mr. Dundas, and having made preparations at some expence accordingly, could not for this season, at least, be deprived of her right by any subsequent act done by Mr. Dundas in favour of Mr. Kemple. Each of these

grounds the petitioner shall consider separately ; and he hopes to be able to convince your lordships that all and each of them are entirely destitute of foundation, at least in so far as concerns the question of possession.

Upon the first point, whether Mr. Jackson, his creditors, or Mrs. Esten, can be understood to have a *bona fide* possession against the patentees, there can be no great difficulty, when your lordships attend to the simple state of the facts. Your lordships have been told of a negotiation with Mr. Jackson, of his having consented to the patent, of the patentees having written a letter to be left at the Chamberlain's office, agreeing to hold the patent in trust for the benefit of all concerned, meaning Mr. Jackson in the first place, with a right of controul for behoof of nobody knows whom, and to be exercised nobody knows how, and certainly never to be actually undertaken by the honourable persons in whose name the patent appears. Your lordships heard a good many circumstances related *viva voce* with regard to this transaction, which the petitioner cannot pretend to recollect ; but it is humbly apprehended that no attention whatever ought to be paid to these circumstances, which cannot be regarded as evidence, by the ordinary and known rules of law.

The question is, what has Mr. Jackson proved? not, what has he asserted? for if this last were the question, and if Mr. Jackson's assertion were to be taken in preference to that of Mr. Dundas, which will admit of no ambiguity, but is directly to the point, that there is no trust whatever for Mr. Jackson, either mixed or unmixed; or if your lordships take Mr. Jackson's assertions now as more probable than his assertion with regard to the same facts, before he made a composition with his creditors, the petitioner would indeed be in a very comfortless situation; he would have little good to expect in the issue of this litigation.

The first fact to be attended to by your lordships is proved by the patent on the table, viz. that it was granted to the Duke of Hamilton and Mr. Dundas, and their assigns. Not a word of trust for behoof of Mr. Jackson, or of the proprietors of the Edinburgh theatre. Trust for the public does not even appear, although it is sufficiently manifest from the circumstances of the case. But as to a trust and no trust, as to Mr. Jackson's having the right to the patent, with the Duke of Hamilton at one elbow, and Mr. Dundas at the other, to watch over all his actions, interfere in every dispute with his players, employ

others for him, and in a word supply all his defects as a manager,—the petitioner has in vain looked through the patent, and he cannot find any such clause in it. Whether it might be traced out in words, or syllables, or letters, (as my Lord Peter has it,) he knows not, but sure he is, that in sentences it is not to be found.

But if the trust does not appear on the face of the patent itself, the petitioner must fairly confess that the evidence of it from any other circumstances is of too elusory a kind to strike his faculties. He cannot enter into all the false and imaginary circumstances which may be suggested by Mr. Jackson; and he has some confidence that your lordships, upon reconsidering the case, will see that he is upon ground strong enough to entitle him to hold every suggestion from such a quarter as unworthy of notice, unless in so far as it is proved by evidence. The truth of the case he is confident your lordships will believe to be with him, for against every averment of Mr. Jackson has he not to oppose the express and pointed declaration of Mr. Dundas, in which that right honourable gentleman admits a trust for the public alone, and takes not the least notice of Mr. Jackson or his pretensions; and this too at a time after he had been humbly approached by

the creditors of Mr. Jackson, beseeching as a favour his consent for their behoof, that the benefit of the patent might go to the petitioner for the next year; and when the most earnest application had been made to him for behoof of these creditors for this season, and when he must have been sensible, that if he was a trustee for Mr. Jackson, his conduct was reconcilable to no principle of honour or honesty. Unwilling as the petitioner is to use such strong language, it is forced from him by its truth; and he is sure that your lordships, upon reconsideration, will not have the smallest difficulty to believe, that, according to the real fact, whatever false colour may be given to it by the other party, neither the Secretary of State nor the noble Duke were, in one shape or other, the trustees of Mr. Jackson.

The petitioner must confess that the utter improbability of the whole story of the trust; the express terms of the patent, and the express terms of Mr. Dundas's letter, are circumstances too strong for him to get over as to the question of a trust, and every other consideration, even in confirmation of these, he considers as deserving of a very inferior notice. But it is not possible altogether to forget the conduct of Mr. Jackson himself;

appearing by evidence in process. It thereby appears that Mr. Jackson, upon his failure, never gave up the patent to his creditors, as an article of his personal estate; never intimated, upon any one of his examinations, that he had a right in the patent; and, on the contrary, were the petitioner now to indulge himself in stating circumstances not proved by evidence before your lordships, he would repeat what was stated in his memorial, and afterwards enlarged upon in his minute, that Mr. Jackson, at a public meeting of his creditors, positively denied, that he had any right in the patent, which indeed he never pretended to, until the agreement for the composition was settled. There are, however, other circumstances of evidence, admitting of no denial, and produced in process, which render it unnecessary to resort to an unproved averment. In the first place, there is the disposition from Mr. Jackson to his trustee, in which the theatre, with all its appurtenances, are accurately conveyed; but from the beginning to the end of that writing, there is not a single word of the patent. And in the second place, there is a minute-book, in which the different declarations of Mr. Jackson are contained; one of them in particular, expressly relating to the patent right. Mr. Jackson

having been pointedly examined upon that subject, declared that the patent was taken out in the name of the Duke of Hamilton and Mr. Dundas, of which he paid the fees, and that he understood he was to continue in the management; but nothing was settled as to this. The petitioner has not quoted the *ipsissima verba*, because he has not been able to get the minute-book, in which this declaration is contained; but your lordships may be assured, that the above is the literal meaning of what he then declared.

Immediately before emitting this part of the declaration, Mr. Jackson has sworn to the property of the building of the theatre; and if he himself had been impressed with the idea at that time that he had any right in the patent, it was certainly most natural for him as an honest man to say so, that his creditors might make the most of it. But the petitioner will be told that this is not a fair, or at least not a conclusive argument; for that Mr. Jackson might have property, and yet endeavour to conceal it from his creditors; that such an attempt to impose upon his creditors, gives no right to the petitioner; that the question depends upon Mr. Jackson's right without regard to the merits of his behaviour at that time.

To this doctrine the petitioner is willing to subscribe; but at the same time he must observe, that the conduct of Mr. Jackson at that time cannot be considered as favourable to the notion of a trust; that it is completely inconsistent with his conduct and assertions now; and consequently that these assertions deriving no support from consistency, from circumstances, or from evidence of any kind, ought to be disregarded by your lordships.

But perhaps your lordships will consider the conduct and professions of Mr. Jackson as circumstances of evidence, for it is only such, still stronger, when it is remembered that the creditors believed him. These creditors had not the most favourable opinion of Mr. Jackson, and were not disposed to be easily duped; but such was the plausibility at least of his behaviour, which they, upon a very watchful consideration of the case, had no doubt was the natural result of facts, as he stated them, that they applied in the most humble manner to the patentees for their authority; and being extremely uncertain of success on account of public circumstances, quite unnecessary to be repeated, they felt a very strong sense of obligation and gratitude to Mr. Dundas for the favourable answer which he returned them;

and having continued their enquiries and investigation, they had no cause to alter their opinion ; and accordingly, having the year before approved of a state of the bankrupt affairs, in which no mention was made of the patent, they next year approved of a similar state, made up by Mr. Playfair himself, and which was equally silent on that subject.

Your lordships will therefore consider the very short and simple facts upon which an interdict may be claimed on the first ground. That Mr. Dundas and the Duke of Hamilton are absolute and unconditional patentees, burdened with no trust whatever for Jackson or his creditors, the petitioner shall now treat as a fact, which cannot, at least in this stage of the cause, be disputed. What then followed is the next question. Mr. Jackson, it is said, took out the patent at his own expence, and this even has been argued on as a circumstance to shew the trust. But your lordships will reflect for a moment that the patentees were to have nothing but trouble, whereas Mr. Jackson himself was to have the whole emolument, at least for a time ; and certainly, if the right conveyed by the patent could not afford payment for the fees, it was to little purpose in-

deed that it had been granted. But your lordships will surely never be of opinion, that Mr. Jackson's paying the expence of the patent is any thing else at this time of day, than a circumstance to prove the trust, for, abstracted from that consideration, it surely will never be argued, that his payment of the patent fees entitled him to draw the whole profits for the whole years of the patent; free of the controul of the patentees; or in other words, was equivalent to a lease of twenty-one years. But as a circumstance to prove the trust, your lordships cannot give any weight at all to it; for let it only be supposed hypothetically, that the patent was of the most absolute and unconditional kind, still there can be no doubt that the party who is to draw the first emoluments would have been left to pay the fees; and if he had not thought proper to do so, there can be no doubt that the patent might have remained unexpedited, as the patentees could have no motive or interest to take it out.

After what has been said, the petitioner shall consider Mr. Jackson's entry to the theatre under the new patent, not as a possession of the patent in his own right, but merely in consequence of a right derived from his masters, the absolute and unconditional patentees. What then was the nature

of this right, is the next question. The petitioner has no occasion to deny, that if Mr. Jackson, upon getting this right from both patentees; either expressly or tacitly, for no distinction need be made; and that in the beginning of a season, could not, after the season had commenced, and he had engaged performers, and otherwise had incurred expence, turn him out in the middle of the season. Certainly they might, and grant their exclusive privilege to another. It does not occur to the petitioner that any argument need be used in support of these, and in particular of this last proposition, for the petitioner does not now suppose the patentees at variance with each other; and unless a grant of the patent for one season, is a grant for the whole term of its endurance, the petitioner cannot see any objection to their turning out their manager, servant, or lessee, at the end of the first season, any more than at the end of the last. Applying this to the question of possession, as considered in this particular point of view, your lordships will observe what happened. No dismissal, as it appears, was given to Mr. Jackson by the patentees, till his bankruptcy; and then, from irresistible necessity, or according to a modern phrase from existing circumstances, he found himself obliged voluntarily

to relinquish his situation, because the theatre now belonged to his creditors ; and in his bankrupt situation, it was impossible for him any longer to appear as manager. Upon his retirement from office, the creditors certainly did not attempt to fill his place. To say so, would be to falsify their whole proceedings ; but they humbly applied to Mr. Dundas to grant the patent right to any person—to any person to whom they should let the theatre. But as if these indiscreet creditors had wished to show, by an authentic instrument, that they had no possession in the patent of this theatre, they, in the first place, let the theatre to Mr. Kemble, as distinguished from the patent by the description in their articles of roup, of the building formerly occupied as a theatre ; and secondly, they made the application to Mr. Dundas and the Duke of Hamilton, so often mentioned, begging these honourable persons, in consideration of their great losses by Mr. Jackson, and out of the abundance of their humane and liberal disposition, to allow Mr. Kemble to enjoy the patent-right for one year. Mr. Kemble accordingly received the consent of Mr. Dundas, and upon hearing nothing to the contrary from the Duke of Hamilton, and hearing nothing of the claims of any other party, presumed, for one

year, to suppose that he was agreeable to both the patentees. Where, it may be asked, was the possession then? Was it with Mr. Kemble, Mr. Jackson, or the creditors? It surely can require no argument to shew your lordships, that if the petitioner had no possession, at least the creditors had none, and least of all Mr. Jackson. Upon this view of the case, when was the possession again acquired? Upon the petitioner's leaving the building of the theatre, Mr. Jackson, Mr. Playfair, the creditors, and Mrs. Esten, were welcome to divide among them. Their possession in that shall never be disputed by the petitioner. He does not mean to trifle with the distresses of worthy persons, who may have inadvertently been drawn into the snare of trusting to the slippery security of the patent and precarious possession. The petitioner has too lively a feeling of the evils already felt, as well as those to be apprehended by himself, to be suspected of insulting such misfortunes. But he cannot help remarking, and that too in a manner, so as to attract as much attention as possible, that the possession of the building of the theatre may have been confounded with the possession of the patent-right, while, at the same time, no two things in nature can be conceived more separate and distinct in themselves.

How then, the petitioner again asks, was the possession of the patent-right again acquired by Mrs. Esten or her authors, and taken from the petitioner, the person who last held it without dispute? The petitioner sees no answer to this question that necessarily forces him to any continuation of his argument; and in the hurry of composition, his counsel finds, that he has, in one single view of the facts, exhausted the first and second heads of his argument.

But although the petitioner cannot see any hypothesis in point of fact resulting from any probable or even possible supposition, as to the present case, upon which the second ground of possession could be maintained, he begs leave to offer an observation or two upon the conclusion therein drawn, leaving the premises as a matter which are totally beyond his comprehension, as facts supported by evidence, to be determined on by others. The petitioner then seeing no ground to say, that Mr. Jackson, his creditors, or Mrs. Esten, had continued the possession under the patentees, begs leave to deny the conclusion from that supposed fact, that the consent of both the gentlemen was necessary, in order to remove the person in possession. There are two patentees, who have joint and indivisible right, and they

agree at first in naming Mr. Jackson or any other person to exercise the patent-right. It is asserted as law, that that person is entitled to continue in possession until he is displaced by the concurring deed of both the patentees ; at least he is entitled to a possessory judgment ; and this is not upon the ground of his having begun to act for the season, which shall afterwards be noticed, but abstractly, because the one patentee approves, and the other disapproves of his conduct.

It is painful to the petitioner, and he is sure it would be so to any person possessed of liberal sentiments, to be obliged to combat such a proposition as this ; and he believes that an apology is due to your lordships for even having mentioned it ; and the apology which is humbly offered is this, that in a question which must be acknowledged of some nicety in point of law, and upon which, in point of patrimonial interest, depends the petitioner's own absolute ruin or comfortable situation in life, it is unsafe to leave any field of argument unexplored, which may be connected, even though remotely, with the question.

By the plea which is here set up, a quibble is substituted in place of a *bona fide* right. The patent is an indivisible property, and no deed respecting it can be effectual without the consent

of both patentees ; but the possession being transferred by common consent, the possession must remain as it is, until a deed concurred in by both parties recalls it ; but no such deed, &c.

Now your lordships will attend to the answer, which would be perfectly sufficient, even if founded upon the same sophistry, which it is not. In the first place, there is no evidence of the terms upon which Jackson was allowed to manage for the first seasons ; and your lordships would probably presume that a new liberty was granted to him every season. In this case, his right expiring at the end of every year, could not be renewed without the consent of both the patentees. But supposing it had been an indefinite right to continue until it was recalled, without limitation of years or seasons, your lordships will never presume without evidence, that the terms of it were to grant Mr. Jackson this liberty, until it were recalled by both the patentees. If such were the terms of Mr. Jackson's right, and this were proved, the petitioner does not mean now to dispute that it would be good ; but he only submits that evidence is necessary, and without evidence nothing can be more improbable, that these two honourable persons should voluntarily enter into such slavery to each other, and to Mr.

Jackson : a state of servitude and bondage, the petitioner will venture to say, altogether new and original in its kind, and among the most extraordinary inventions of these extraordinary times ; that the Duke of Hamilton shall do nothing without the consent of Mr. Dundas, and that Mr. Dundas shall do nothing without the consent of the Duke of Hamilton. Is it possible to credit this mutual interdiction ? The petitioner needs not ask your lordships, because the whole foundation of facts upon which such an extraordinary superstructure could be reared are totally wanting.

The petitioner shall therefore proceed to the third head of his argument, and he is persuaded the only one concerning which a rational doubt could be entertained ; but yet he presumes, after what your lordships have seen, that many words will not be necessary to resolve it. This plea supposes that the possession could only be supported by the allowance of the patentees. It supposes that the patent was an indivisible right ; that the act of one patentee was not sufficient to authorise possession ; but, that in consequence of the acts and deeds of both patentees, upon the solicitations of Mrs. Esten herself, their consent must be held as given to her right for this season.

Upon this point the petitioner holds the question simply to be, whether Mrs. Esten has the authority of both the patentees? for, unless she has the authority of both, it must be admitted that she has no authority at all.

In this question the petitioner shall entirely lay aside the authority which he himself obtained from Mr. Dundas, just one day later in date than that which Mrs. Esten obtained from the Duke of Hamilton; the only authority, if the true state of the fact is attended to, which Mrs. Esten has to boast of.

In this question, the petitioner shall likewise lay aside the admitted fact, that Mrs. Esten engaged the whole of her performers before she received the pretended authority from Mr. Dundas; and that even after that period, and not even now, has she executed, nor has any person in her behalf executed, any agreement whatever upon the faith of that pretended authority; neither shall it be insisted on, that supposing such an agreement had in fact been entered into, which it is not, still *ex facie* of the scrolls, which are only writings with regard to it, there is the most ample stipulation of indemnity which can be conceived.

In this question, the petitioner shall likewise lay aside the much greater expence that he has

incurred than Mrs. Esten, by not only having in common with her a large rent to pay, but having fitted up in a magnificent manner, a theatre altogether new and unequalled, in the beauty and accommodation of its plan, by any other theatre in the island ; and likewise having engaged a set of performers more numerous, and with larger salaries than her's ; expences attended with ruin, if not reimbursed, and reimbursement being yet at a mighty distance, notwithstanding the petitioner heard it stated from the most respectable quarter in the court, upon information which he will venture to say could not be well founded, that the large profits he had already made would reimburse him, and that he might easily find a way to save himself any future expence. It would be imprudent to enter into any actual calculations ; but at the same time the fact ought to be known, that the petitioner's situation has been very much mistaken, and that his absolute ruin is the unavoidable consequence even of a continuance of the interdiction, the salaries of his performers alone, besides other burdens, amounting to upwards of 160*l.* a week.

But there is no end to pleas of favour on either side, and the petitioner is as fully sensible as any

man can be, of the prodigious loss which might be incurred by Mrs. Esten upon losing this question; for, though the petitioner would never think of molesting her, he is aware that he has acquired the public favour, and that his performers are more attractive to an audience than those of Mrs. Esten.

The question before your lordships is an abstract point of law; and, as before stated, it is simply this, whether Mrs. Esten, for this season, acquired the consent of both the patentees?

The very utmost that ever has been said for Mrs. Esten amounts to this, That she had the consent of the Duke of Hamilton, together with a *non repugnantia* from Mr. Dundas. Now, as to the Duke of Hamilton's consent, the petitioner means to say nothing; but he humbly entreats your lordships again to consider the circumstances upon which it has been argued that Mrs. Esten had the consent of Mr. Dundas.

In the first place, there is a letter from Mr. Dundas himself, dated the 25th of September, 1792, in which it will not be pretended that there is even a *non repugnantia*; for Mr. Dundas only says, that he intends to postpone the consideration of the subject till he goes to Scotland.

In the second place, there is a letter from Mr.

Dundas's secretary, of the 22d November, 1792. And what more? Why truly nothing that is not explanatory of Mr. Dundas's fixed intention in favour of the petitioner; not merely a *non repugnantia*, but an absolute declinature to communicate his right to Mrs. Esten.

Your lordships, therefore, have the letter of Mr. Dundas's secretary, and you will consider how far that letter, which the petitioner formerly feared so little, which Mrs. Esten must have feared so much, and which Mr. Dundas himself could not possibly have considered of the smallest moment, is conclusive evidence even of the *non repugnantia*.

With regard to this letter, the petitioner does in the first place say, and he humbly prays a special judgment upon the point, and your lordships will see the propriety of his doing so, in a matter of such infinite consequence to him, that it is no legal evidence of Mr. Dundas's consent, or even of his *non repugnantia*, as it is called. In a question of such importance, and which must be determined upon an abstract point of law, your lordships will not regard as a legal transmission of such a right to this patent, upon which many thousand pounds may depend, a deed which

would not be a legal transmission of any other right known in the law of Scotland, however insignificant. The patent is granted to the Duke of Hamilton and Mr. Dundas, and their assigns. Who are their assigns? Is it a legal assignation of my right, according to the principles of the law of Scotland, when my clerk or secretary writes a line evidently in a hurry, and loosely worded, telling the party wishing to have such assignment, that I do not choose to have any thing to do with him; and if he and another are equally keen in search of it, that I do not choose to interfere in a business with which I have no concern?

With great submission, this view of the subject has not been sufficiently attended to. In the petitioner's humble apprehension, even had Mrs. Esten had a verbal authority from both the patentees, she might have been called upon to produce a regular and formal transmission of the right before she could claim possession. But the present question is embarrassed with no such difficulty; for all that is pretended is, that Mr. Dundas's secretary wrote her, that he would have nothing to do with her. And the question is, does this, or does it not, constitute her the legal assignee of Mr. Dundas?

Supposing that this were a lease of any other kind, in which two parties were competitors for the lease. Mrs. Esten obtains the consent of one of the joint proprietors ; but the other declares, by a loose card from his clerk, that he will not interfere, and afterwards the petitioner prevails upon him to declare in his favour. Suppose, then, that the subject were a house, and that house locked up :—but why locked up ? Is not the theatre-royal open, and is not Mrs. Esten in possession ? Yes ; but the patent does not attach to the theatre-royal, and from every word of the grant, it is a separate right, and the patent, in the mean time, is locked up as effectually as the strongest doors and bolts could lock up a fencement. Could it then be seriously maintained, or for a moment be imagined by any lawyer, that such a consent from one joint proprietor, with such a *non repugnantia* expressed by a clerk, when followed by an absolute denial from the other joint proprietor, would entitle Mrs. Esten to possession ? Mrs. Esten says it would ; for, upon this branch of the cause, her plea is exactly the same. But the petitioner maintains, that in such circumstances no summary judgment could be pronounced upon the possession ; and that the joint

proprieters would be obliged to have recourse, in order to get rid of one another, to the more tedious method of a process of division or declarator.

Having thus troubled your lordships at a much greater length than the petitioner at first intended, owing to the hurry in which it was necessary to prepare this paper, in order to bring the cause as speedily again under the review of your lordships, to avoid the absolute ruin of delay, he shall not trouble your lordships with any recapitulation of the heads of his discourse, or his conclusions from the points maintained in it. He humbly suggests to your lordships that, let his fate be what it will, the sooner it is decided the better.

May it therefore please your lordships, to alter the interlocutor complained of; and to find, first, that the pretended letters-patent are void and null, from never having passed the great seal of Scotland; and, secondly, that Mr. Playfair and Mrs. Esten are not in possession of the exclusive privilege thereby pretended to have been conveyed; and therefore to recal the interdict at their instance, and to find expences due.

According to justice, &c.

JOHN CLERK.

APPENDIX.

The two following papers were communicated after the foregoing petition was printed ; but as they appeared to the petitioner to throw considerable light upon the views of the parties when the patent was obtained, he has taken the liberty to annex them. The first is the original scroll of the proposals which were made by the gentlemen therein mentioned, for renewing the patent in their own names, in trust for the public of Edinburgh ; and your lordships will see, that the express view of these proposals were totally to exclude Mr. Jackson, or any player whatever, from interfering with the patent-right. This scroll is holograph of Mr. David Hume, advocate ; and there is not the smallest reason to doubt its authenticity. The second is a scroll of a letter likewise holograph of Mr. David Hume, upon which there are various corrections holograph of Mr. George Home, one of the clerks of session ; which letter was meant to be sent by sir James Hunter-Blair, then in Edinburgh, to sir Adam Ferguson in London. Your lordships will observe from the contents, that no obstruction or difficulty was

then expected in the accomplishment of those very liberal views which were then entertained: Now your lordships will observe what these views were, and that they went the length of excluding Mr. Jackson, or any player, entirely from the property of the patent; and your lordships will form your own conclusion, how far it is probable that the Duke of Hamilton and Mr. Dundas would accept of the patent upon any other terms, or upon less honourable terms, or, finally, upon terms less advantageous for the public of Edinburgh.

No. 1.

*Proposals for the better Management of the
Edinburgh Theatre.*

February 1, 1785.

A taste for dramatic entertainments having long prevailed, and generally diffused itself among the higher ranks of people residing in the city of Edinburgh, it became a favourite object there, some years ago, to make provision for enjoying them both more regularly, and in greater perfection than had till then been possible, there being at that time no license from the proper authority to protect the exhibition. On considering

the numerous orders of creditable and well-educated persons, who are fixed to the city by their professions, and that it is, besides, on various accounts, a place of general resort to the gentry of Scotland; it was believed, that Edinburgh might support a theatre of its own, and afford sufficient encouragement for inducing some performer of eminence to make the entertainment of the audience there his object. If such an establishment could be accomplished, it seemed desirable in other views than that of mere amusement. For it was thought by many, that the representations of the theatre, under proper conduct, would, by extending a taste for criticism and polite literature among both sexes, contribute to improve the manners and the society of the metropolis; as also that they might be serviceable in saving the very numerous youth attending at the university, from an early acquaintance with more private and more dangerous avocations.

In pursuance of these views, a patent for a theatre in Edinburgh was obtained, and Mr. David Ross was named patentee.

'The advantages expected from this measure have not ensued.' To Mr. Ross, indeed, the adventure has turned out sufficiently profitable; the theatre, it is well known, having for long been

loaded with an annuity of 500*l.* to him, though it receives from him neither personal service, nor any other advantage whatever. But the public has by no means benefited in the same proportion. So far from it, that their entertainment is not now superior, nor even equal, to what it was in the old, incommodious, and unlicensed house. Experience has shewn, in short, that the plan of management adopted was imprudent; that by the patent's being vested in a player, the public are in a great measure made dependent on him, and left at his discretion; that they are obliged, on this plan, to run the hazard of his indolence, his inability, and his avarice.

There is, however, evidently, no necessity for vesting the patent in any one of that profession. If, for instance, it were bestowed on a number of gentlemen residing in Edinburgh, and worthy of the public confidence; and if these persons were empowered by the grant to appoint and contract with a manager, to whom the profits of the house shall go; it should seem that all danger of its being jobbed would thus be avoided, and sufficient security be obtained for the fair and beneficial administration of it. Patentees of the above description, and debarred from all concern in the profits of the house, could have no interest,

but to make the most effectual provision for their own entertainment and that of the town. The manager holding his station only for a limited time, and depending on the good-will and good opinion of his constituents and the public for a renewal of his appointment, would be strongly prompted by interest to do his utmost for giving them satisfaction. And, lastly, being entitled, on this plan, to receive the produce of the adventure free, and unburdened with pension or incumbrance to any useless individual whatever, he would thus be enabled, if active and intelligent, again to put the theatre on a respectable footing, and to bring its entertainments into fashion, while at the same time he would not labour unprofitably for himself.

For these reasons, which seem to render the above-mentioned plan the most expedient and advisable; and as the approaching term of Mr. Ross's patent makes it necessary, without delay, to take measures for preventing a renewal of the abuses that have already been experienced, (which cannot be hoped if a player is again named patentee), it is proposed, that application be now made for obtaining a new patent, and that it be vested in the following persons as commissioners for the public:—Earl of Haddington, sir James Grant, sir

William Forbes, sir Archibald Hope, Mr. George Home, clerk of the session ; Mr. William Nairn, and Mr. Blair, advocates ; Mr. Henry Mackenzie, solicitor in exchequer ; and Mr. Alexander Wood, surgeon.

No. 2.

I some time ago had the honour of acquainting you, that, along with the Lord Advocate, I had conferred with a deputation from the gentlemen who framed the proposal for the better management of the Edinburgh theatre, on the subject of some objections urged against that proposal ; and as those objections were then obviated to my entire satisfaction (which also seemed to be the case with the Lord Advocate), I requested of you in my letter, immediately to use your endeavours for obtaining the patent in terms of the proposal. It is with some regret that I find myself obliged, by the small progress made in this business, or rather by the total stop put to it, again to trouble you on the subject, which I now do in the name of those gentlemen and of the public, as well as in my own.

You must, sir, I am sure, agree with me in thinking it highly desirable, for more than one

reason, that the theatre of a city, such as Edinburgh, should be made worth the attendance of people of taste and education; and you cannot but think it fit, that the inclination of the public there, I mean the respectable part of it, should be consulted in determining what plan shall be adopted for that end.

Now, the proposal some time ago transmitted to you for vesting the patent in a set of gentlemen as trustees for the public, was by no means a clandestine business, nor intended to serve any private purpose, as indeed every one may see, on reading the names of the proposed patentees. The idea of it resulted from, and was suggested by the evils felt under the present patent, which had been long and loudly complained of. Neither has the measure been made a secret of since it was first resolved on. It has, on the contrary, at one time or another, been communicated to all whom it was fit to consult on a matter of the kind. The subject, indeed, naturally became a topic of conversation in all companies; and I will venture to say, that the proposal every where meets with most hearty approbation and concurrence, as laying down the only plan that affords security against the patent's being jobbed and trafficked in time coming, as it has hitherto been. In short, it

is the inhabitants of Edinburgh who are to be considered as making the present application ; and convinced as they are, that a well-regulated theatre is of much importance to their city, they cannot doubt of their success, as they cannot conceive to be true what they have heard alledged, that a patent for a term of years gives the patentee a right to a perpetual renewal of it, and that he can transfer that right to whoever he thinks proper. I have only further to add, that as the present patent expires in eighteen months, it is necessary to obtain a new patent immediately, that the patentees may have time to take the proper measures for carrying the purposes of it into execution.

I am, &c.

This petition the court ordered them to answer in so many days—and at the same time, the court recommended the parties to settle it between themselves. Proposals were instantly made on the part of Kemble, but Mrs. Bennet required ten days to consult Mrs. Esten on those proposals : but Kemble's lawyers suggested to her, that she would be liable in damages to Mr. Kemble, if she did not consent to take off the interdict in the mean time ; as he had proposed to lodge the receipts of the theatre in the hands of her own advocate, till the issue of the question.

This very fair proposition was submitted to the discretion of her advocate, who instantly took off the interdict, and the new theatre opened again. In the mean time they put in the following answer :

February 19, 1793.

ANSWER,

For ROBERT PLAYFAIR, writer in Edinburgh, Trustee for the Creditors of JOHN JACKSON, late manager of the Theatre-Royal, Edinburgh; and for Mrs. HARRIET PYE ESTEN, lessee of the said Theatre-Royal, suspenders : To the Petition of STEPHEN KEMBLE, designing himself Manager of the New Theatre of Edinburgh, charger.

THE question before your lordships is merely a question of possession, which, from the nature of it, must be determined upon *prima facie* evidence; for your lordships, in the court in which you sit, in judging of this question, have no means of investigation. In the bill-chamber you must decide upon titles produced, upon fact of public notoriety, or upon allegations pregnant and relevant, in support of which, caution upon passing a bill is the security which the law provides to the charger.

If these principles are kept in view, it is humbly hoped your lordships will find no great difficulty in discovering the weakness of the foundation on which the petition rests. The petitioner would have your lordships treat as a piece of waste paper a royal patent, undoubtedly issued in pursuance of an act of parliament, and proceeding upon the sign manual of his Majesty, to which the Lord Chancellor, the first judicial magistrate of the united kingdom, has affixed the seal of Great Britain; and under which possession has been enjoyed in terms of the grant, till lately that the petitioner, without any previous process for declaring it void, or any intimation that he was to make an attempt of the kind, took upon him to set up business, in open violation both of the grant and of the law of the land.

The petitioner would likewise have your lordships shut your eyes to the notorious facts, that Mr. Jackson certainly, with the sanction of the patentees, possessed under this patent, which he paid for and kept in his custody as the person chiefly interested in it; that one of the patentees gave his express sanction to the communication of this possession, by the trustee and assign of Mr. Jackson, to Mr. Kemble, the lessee of his creditors; and that the other patentee not interfering,

Mr. Kemble, along with Mr. Jackson, who was joined with him in the lease, continued that possession under the trustee and under the patent, till Mrs. Esten obtained the possession by a similar transaction, with this difference, that not only one of the patentees approved, but that the other signified his intention not to interfere. And, though to these circumstances of notoriety are added the strong and pointed allegations, that the patent was issued in consequence of Mr. Jackson's written consent, and in consequence of his particular request to the most noble and right honourable personages whose names it bears; and that these personages declared, in a letter written upon the occasion to the Lord Chamberlain, that they agreed to hold the patent in trust for the parties concerned; allegations that will be proved as soon as your lordships can give an opportunity to prove them, and are already strongly countenanced by letters of the gentlemen employed in the business; still the petitioner would have your lordships to consider all this as of no consequence, as implying no legal possession, as indicating no legal right of possession, and of course as entitling to no protection from the law.

The respondents, with great submission, ap-

prehend, that unless your lordships are to adopt in this case a different rule of practice from what obtains in every other, you cannot possibly, sitting in the bill-chamber, adopt such views. You will consider a patent under the seal of Great Britain, followed with possession, and issuing after the expiration of a previous title of the same nature, likewise followed with a peaceable possession, as, *prima facie*, a legal title; and you will hold the above circumstances, partly of notoriety, partly proved, and partly averred in the most pointed manner, and offered to be proved when forms will admit, as good grounds for granting an interdict to prevent the respondents being disturbed in their possession by the petitioner till their titles are defeated, and their possession put an end to in a regular manner, and after a thorough investigation of their rights, an investigation which the forms of the bill-chamber certainly do not afford.

The respondents must claim your lordships' indulgence in laying once more before the court a detail of the facts, which, though it must be particular, they shall endeavour to render as succinct as they are able; and they will then have little occasion to trouble your lordships with much argument.

It appears from Hawkins's *Pleas of the Crown*, p. 198—225, that stage-plays, unlicensed, were indictable in England as public nuisances. By the 39th of Elizabeth, cap. 4. common players, unless authorised, were deemed rogues; and by the 12th of Queen Anne, cap. 23. common players were declared rogues and vagabonds, and subjected to the severe punishments provided by that act, which extends over the united kingdom. The power of licensing plays, and all other public exhibitions, appears, from the most ancient times, to have been exercised by the Lord Chamberlain as an officer of the crown, which is invested by the constitution with the charge of the national police; and the master of the revels, who is an officer under the Chamberlain, very commonly, in both kingdoms, administered that controul over the stage, and the actors on it, which belonged to the Chamberlain himself. This authority was sometimes exercised with rather a high hand; and some doubts having arisen, the statute of 10th of Geo. II. cap. 28, was passed, by which it is expressly provided, that every person, “who, without authority by letters patent from his Majesty, his heirs, successors, or predecessors, or without licence from the Lord

Chamberlain of his Majesty's houshold for the time being," shall perform for profit any entertainment of the stage, and have no legal settlement in the place where he so performs, shall be punished as a rogue and vagabond, in terms of the act of Queen Anne; and though possessed of such legal settlement, and whether possessed of it or not, shall forfeit for every such offence the sum of 50*l*. It also provides, that no new plays, or additions to plays, shall be acted, unless a copy shall be first sent to the Lord Chamberlain, whose powers to prohibit the performance of any entertainment of the stage, are recognized and fenced by pains and penalties. It also provides, sect. 5. "That no person or persons shall be authorized, by virtue of any letters patent from his Majesty, his heirs, successors, or predecessors, or by the licence of the Lord Chamberlain of his Majesty's houshold for the time being, to act, represent, or perform for hire, gain, or reward, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein, in any part of Great Britain, except in the city of Westminster and within the liberties thereof, and in such places where his Majesty, his heirs or successors, shall in their royal persons reside, and during such residence only, any

thing in this act contained, to the contrary in any wise notwithstanding.”

Notwithstanding this statute, a theatre, under pretence of a concert-hall, was kept in the suburb of Canongate ; but afterwards the statute of the 7th of his present Majesty, c. 27, for extending the royalty of the city of Edinburgh, was passed, which contains the following enactment : “ That so much of an act of parliament which passed in the 10th year of his late Majesty’s reign, entitled, An act for reducing the laws relating to rogues, vagabonds, and sturdy beggars, and vagrants, into one act of parliament ; and for the more effectual punishing such rogues and vagabonds, sturdy beggars and vagrants, and sending them whither they ought to be sent, as relates to common players of interludes, whereby all persons are discharged to represent any entertainment of the stage whatever, in virtue of letters-patent from his Majesty, or by licence of the Lord Chamberlain of his Majesty’s houshold for the time being, except within the liberties of Westminster, or where his Majesty is residing for the time being, be, and the same is hereby, repealed, so far as the same respects the city of Edinburgh ; and that it shall and may be lawful to his Majesty, and his heirs

and successors, to grant letters-patent for establishing a theatre or play-house in the city of Edinburgh, or suburbs thereof, which shall be entitled to all the privileges, and subjected to all the regulations, to which any theatre or play-house in Great Britain is entitled and subjected."

By the statute of the 28th of his present Majesty, c. 30, justices of peace are authorized, in certain circumstances, to license theatrical representations occasionally ; but it is provided, *inter alia*, that no licence shall be given within twenty miles of the cities of London or Edinburgh ; and the controul of the Lord Chamberlain is expressly reserved.

In pursuance of the powers granted to his Majesty, by the statute of the 7th, a patent was applied for to the Lord Chamberlain, in consequence of an arrangement between the proprietors of the old theatre in the Canongate, and Mr. David Ross of Covent-garden, by which he, in consideration of obtaining the patent, undertook the debts with which the old theatre was loaded. The patent was accordingly taken out in the name of Mr. Henry Davidson, and was afterwards conveyed by assignation to Mr. Ross, May 11, 1769.

This patent passed the seal of Great Britain, and not the seal appointed by the treaty of union

to be used in Scotland, instead of the ancient great seal of Scotland ; but the short time allowed for enquiry, has not permitted the respondents to learn with certainty, who were the persons that advised the patent to pass in this manner, or upon what principle they proceeded ; but there can be no doubt that the measure was well considered. It was the first of the kind ; gentlemen of great eminence in the law, were parties in the arrangement with Mr. Ross ; and Mr. Davidson, by his situation as a solicitor at London, had access to the best information. The respondents, however, can easily perceive, that as the enactment in question was clogged with the condition, that the theatre to be established should be entitled “ to all the privileges, and subjected to all the regulations, to which any theatre or play-house in Great Britain is entitled and subjected,” the necessity of having recourse to the Chamberlain, who was the proper officer for regulating that part of the national police which respects the stage, would be immediately perceived ; and, that as the Lord Chamberlain’s office communicated with the great seal of Great Britain, and had no channel of communication with the union seal of Scotland, it would be judged that the patent would issue through the

office of the great seal ; and it would be observed, that there was that very propriety in its passing in this manner, which the petitioner himself attributes to the commissions for the Scotch boards of revenue passing the great seal, viz. that it was the natural consequence of the extension of the revenue-laws of England to Scotland ; so that the English officers of the law were perfectly competent to decide on the propriety of such commissions. Now here, in like manner, the enactment above quoted expressly extended the privileges and regulations of the English theatres to their first lawful theatre that was to be erected in Scotland. And surely the most proper persons to see that the patent issued conformably to these laws and regulations, were those officers who had an opportunity in England to know officially what they were.

It may be remarked too, that as the expence of passing a patent through the great seal, is much heavier than that of passing it through the union seal, the gentlemen concerned had no occasion to take the former course in preference to the latter, if they could have avoided it.

Mr. Ross, after acquiring the patent, published proposals for erecting a theatre within the extended royalty, by subscription ; and accordingly,

twenty-five gentlemen advanced 100*l.* each, upon condition of security upon the patent, and upon the edifice. The present theatre-royal was forthwith built, and Mr. Ross, besides the 2500*l.* raised by subscription, contributed about 4000*l.* more to this object.

In this manner Mr. Ross became involved in debt, and tiring of the management, granted leases to different persons ; and at last, of this date, July 14, 1785, sold his whole interest in the patent and in the theatre to Mr. Jackson, on condition of being relieved of the debts of the theatre, and of paying Mr. Ross an annuity of 150*l.* during life.

At this time the patent was within three years of its expiration ; but Mr. Jackson was not discouraged by that circumstance, as he conceived that he was purchasing the equitable claim to a renewal, which had always been listened to in England, where patents were constantly renewed in favour of the proprietors of the expired patents, and of the theatres which had been constructed and furnished in consequence of them ; and accordingly Mr. Jackson had bound himself to pay the annuity to Mr. Ross, on the faith that such was the case.

Mr. Jackson conceived, that the want of success

of the former managers was chiefly owing to their not finding employment for their company during that period of the year when the Edinburgh theatre is shut. He not only therefore repaired the Edinburgh theatre at a large expence, but built a very handsome theatre at Glasgow, and made purchases and arrangements for acting at Aberdeen, and elsewhere, in the hopes that he would thereby be able to afford handsome appointments, and of course procure for the public the most eminent performers.

Soon after, however, several gentlemen who had probably been disgusted with the theatre passing from hand to hand, and its decorations neglected for some years before, and who were not sufficiently apprized of the nature of Mr. Jackson's views, adopted the plan of obtaining the patent to certain very respectable persons of their number, in the view of preventing in future those abuses which had occasioned their dissatisfaction : but these gentlemen disclaimed all view to any personal profit. It does not appear, however, that they were sufficiently sensible of the strong claim that adventurers in such a lottery as the stage, have to obtain the renewal of patents, in the view even of profit to themselves. It appears from Cibber's History of the Stage, and from

the well-known misfortunes of the Edinburgh managers, that it was very often the opposite of a lucrative adventure; and it is certainly most reasonable, that people who engage in a very troublesome undertaking, in order to afford to the public the most rational and refined of all its amusements, at the hazard of incurring great loss, should receive every encouragement in return, by a certainty of protection, and of obtaining an opportunity, in case times become more favourable, of obtaining a recompence for their trouble and risk.

Mr. Jackson was naturally alarmed at the proceedings of these gentlemen, and put in a memorial to the Lord Chamberlain in his own name, and in that of the subscribers to the theatre, explaining the nature of his claim to a renewal of the patent. He there, among many other circumstances, observes, that this right was now understood to be so established, that shares in the London theatres sold at nearly the same rates when the patents were near expiring, as when there were many years of them to run.

This memorial was certainly felt to carry great weight. One at least of the gentlemen who had applied for the patent, and one of the most eminent among them, signified his conviction that

they were in the wrong ; and, in short, the matter came to this : It was felt, that Mr. Jackson's claim to the patrimonial benefit of the renewal was invincible, but that still there was a propriety in subjecting the manager to some controul ; and, with this last view, it seems to have been suggested to Mr. Jackson to accept of a patent for a shorter term. This, however, he declined, as of bad example ; and it naturally occurred to him, that it would be better to take the patent at the usual term of twenty-one years, but to endeavour to prevail with some persons of great name, that had condescended to patronize him, to hold the patent. In this way he hoped to satisfy all parties ; to convince the public, and to convince the gentlemen themselves that opposed the renewal in his favour, that he had no plan or desire to indulge views of his own contrary to the inclinations of the public, or the judgment of those in whom the public placed the highest confidence ; and to secure at the same time that patrimonial interest to himself, to which he apprehended he had acquired so just a claim.

With this view he made his humble application to the Duke of Hamilton and Mr. Dundas, to take the patent in their own names, in the understanding that he should continue manager, and reap

the profits, but be subject to their controul. They did him the great honour and kindness to agree to his request ; and it is believed, it will not be pretended that any such request was made to them upon the part of the gentlemen who had applied for the patent, in prejudice to Mr. Jackson's claim to a renewal of it. The interposition was therefore really in behalf of Mr. Jackson, and nowise in behalf of the gentlemen applying for the patent in opposition to him, though it was no doubt calculated to remove the objection which had weighed with these gentlemen, that a renewal of the patent to Mr. Jackson in person, would have left the management without any controul than that of the Lord Chamberlain, which was necessarily little calculated to secure much perfection in the representations at a theatre so remote as Edinburgh. Accordingly it will not be alleged, that the gentlemen in question ever gave themselves the smallest trouble about the matter afterwards as parties concerned, by application to the patentees, or otherwise.

Mr. Seton, solicitor at law in London, is possessed of the original draughts of the material letters that passed upon this occasion ; in particular, of the draught of the letter to the Lord Chamberlain, from the most noble and right honourable

patentees, corrected in the hand-writing of one of them ; but though he gave copies to the agent for the respondents, he has, upon being lately applied to, positively declined to part with the original draughts out of his hands extra-judicially : in evidence of which fact, the letter of the respondents' solicitor shall be shown to the petitioner's doer when desired. The copies, however, shall be laid before your lordships. The first is Mr. Jackson's consent to the issuing of the new patent.

June 10, 1786.

“ I, as proprietor of the theatre-royal of the city of Edinburgh, and patentee thereof, hereby consent and agree, that a new patent for the said theatre may, if it please his Majesty, be granted to his grace the Duke of Hamilton and Brandon, and the right honourable Henry Dundas, treasurer of the navy, and to the survivor of them, for a term of twenty-one years, to commence from the 29th September, which shall be in the year 1788, at which time the term of the subsisting patent expires to the said theatre ; the rights of the gentlemen subscribers to the said theatre, being understood to subsist, and be continued under the new patent, in terms of the original

deed made in their favour at the erection of the said theatre.

(Signed)

J. JACKSON."

"Signed, sealed, and delivered, in presence of

(Signed)

WALTER ROSS.

THOMAS LAW."

This document was accompanied with the following letter to Mr. Seton :

"As the shortening the term of the patent for the Edinburgh theatre, appeared to me to be a material injury to the property, therefore, in order to put an end to all disputes upon that head, I proposed that the new patent should be taken out for the usual term of twenty-one years, by his grace the Duke of Hamilton, and the right honourable Mr. Henry Dundas; and they have, upon my application, condescended to hold it.

"I now lodge with you my right to the present patent, with a consent on my part to the new one. You will please to give in the consent to the Lord Chamberlain, and get it entered in the books. Take out the new patent as soon as possible, and place the charges to my account, &c.

(Signed)

J. JACKSON."

The patentees' letter to the Lord Chamberlain follows :

"In order to put an end to the disputes which

have arisen relative to the renewal of the patent for the Edinburgh theatre, we have been requested to apply for the same in our joint names, as trustees for the parties concerned ; and therefore request your lordship humbly to move his Majesty, for a renewal of the said patent in our joint names for twenty-one years, from and after the expiration of the present term.

(Signed) HAMILTON & BRANDON.
HENRY DUNDAS.”

Letters of correspondence are subjoined to this paper, which adstruct and illustrate the above copies.

The patent was forthwith expedite ; and it appears from the account of expences produced, a copy of which is subjoined, that the expences were paid by Mr. Jackson.

This patent was expedite in the same manner as the former one, which had received its full effect in this country.

The new patent commenced in September 1788, and Mr. Jackson immediately, with this patent in his pocket, took possession of the privileges thereby conferred, which he enjoyed peaceably, and without interruption, till his affairs fell into disorder in summer 1790. During this period he neither asked nor obtained any lease, or any con-

sent verbally or in writing from the patentees, but he acted under the understanding, that he was proceeding under the true intent and meaning of the transaction upon which the patent issued, viz. that the patrimonial interest in the patent was in himself; but that he was bound to comply with all reasonable orders that the patentees might think proper to issue, in order to rectify or prevent abuses in the management; and it is believed, that the public of Edinburgh, and that knew any thing of the transaction, understood perfectly, that the only reason why names so respectable appeared in the patent, was a pledge to the public, that Mr. Jackson considered himself as under their controul.

Upon Mr. Jackson's failure, Mr. Gibson, merchant in Edinburgh, was appointed trustee for the creditors, and Mr. James Gibson officiated as agent. These gentlemen were probably totally unacquainted with the foregoing circumstances; and it does not appear from the state which was afterwards made out by them of Mr. Jackson's affairs, that they made themselves acquainted with them. It appears, however, that when Mr. Jackson was examined by the sheriff, upon the 30th August, 1790, he declared as follows: "Declares,

that he considers himself to be proprietor of the Edinburgh theatre, burdened with the annuities to the subscribers and others ; and that he holds it by disposition from Mr. David Ross, the former patentee : that the patent to the theatre is taken out in the name of his grace the Duke of Hamilton, and the right honourable Henry Dundas, treasurer of the navy : that the declarant paid the whole expence of taking out the patent : that the declarant understood he was to have the management of the theatre, and the emoluments arising from it, so long as the said patentees should be possessed of the patent : that the transaction with regard to it, was made by the late Mr. Walter Ross, writer to the signet, when at London ; but the declarant does not think that any written agreement was entered into with regard to it, and no subsequent settlement of that matter has since taken place between the patentees and the declarant." It is plain from this declaration, that Mr. Jackson considered himself as possessed of the patrimonial interest in the patent, so that the right of the patentees resolved into powers of controul. And accordingly, when the trustee was about to let the theatre for behoof of the creditors, it appears, that he must have viewed the matter in this light ; for he first let the theatres to Mr. Jack-

son for the year, from October 1790, to October 1791, without consulting the patentees; and when upon his failure to pay the rent stipulated, the creditors adopted the resolution of exposing to public auction a lease for the year following, the only condition proposed in favour of the right of the patentees was an article, that no person should be preferred as lessee who was not approved of by the Lord Advocate, the Lord Provost, and the Dean of Faculty; and accordingly they intimated, by letter, this plan to the patentees, as a measure that secured to the public a proper manager for the Edinburgh and Glasgow theatres, and a relief to a large body of creditors. The letters written to the patentees are subjoined.

Mr. Jackson, upon this occasion, agreed with Mr. Kemble to take a lease of the theatres of Edinburgh and Glasgow for their joint behoof, and a lease for one year was accordingly taken, at the rent of 1200*l.*; and though the lease was extended in the name of Mr. Kemble singly, the approbation of Mr. Dundas, as given through the medium of the Lord Provost, Lord Advocate, and Dean of Faculty, was to Mr. Jackson and Mr. Kemble as joint managers. This consent was in writing, and is in the hands of Mr. Kemble

or his agent. The Duke of Hamilton, though applied to for his consent, made no answer.

The following missives passed on this occasion betwixt Mr. Kemble and Mr. Jackson :

“ SIR, *Edinburgh, Nov. 2, 1791.*

“ I hereby agree to your having a joint and equal concern with me in the Edinburgh theatre, for a year from this date, and authorize you to take the lease at the sale to-day, and oblige myself to procure satisfactory security for the half of the rent; the receipts to be equally divided weekly. After the lease is taken, we shall enter into a regular agreement on stamped paper; and if any difficulty occurs in adjusting the same, or afterwards in relation to the business, it shall be referred entirely to the Dean of Faculty.

“ If you incline, you shall be entitled to the same share in time coming, I have the like option of holding a joint concern. I am, &c.

(Signed) J. JACKSON.”

Mr. Stephen Kemble.

“ SIR, *Edinburgh, Nov. 2, 1791.*

“ I hereby agree to your proposal in your letter of this day's date, and to extend a regular deed on stamped paper accordingly. I am, &c.

(Signed) S. KEMBLE.”

Mr. J. Jackson.

The parties differed in their arrangements, and the Dean of Faculty (*9th Aug. 1792,*) pronounced a decret-arbitral, in which he in substance found, first, That Mr. Kemble should be sole acting manager, but subject to make reparation for damages for entering into engagements that Mr. Jackson objected to. Secondly, That Mr. Kemble could not defeat the rights of Mr. Jackson to an equal share, in consequence of a delay on the part of Mr. Jackson in finding security. Thirdly, That there was no departure from the agreement which could release either side, and that in future, the parties should continue to hold a joint concern in the theatres, on the same terms as then arranged. Fourthly, That Mr. Jackson was entitled to half of the profits of the theatre, but that he should forfeit this right if he did not agree within fourteen days to impliment the decret, and that if he afterwards acquiesced in it, or was compelled to impliment it, 8*l.* per week should be deducted from his share of the profits, as a salary to Mr. and Mrs. Kemble. Fifthly, And in case the said J. Jackson shall, by a settlement with his creditors, or otherwise, regain possession of the theatre, he shall be bound and obliged to communicate the same to the joint concern, upon receiving

500l. a year rent for the two theatres of Edinburgh and Glasgow, or such greater sum as shall be fixed by his grace the Duke of Hamilton and the right honourable Henry Dundas. Sixth. Finds that it shall not be competent refusing to bid for, or become lessee of the theatre, in opposition to the party willing to continue the joint concern. And in case the said J. Jackson regain possession of the theatre, and refuses to obtemper his decret-arbitral, by continuing the joint concern, he shall be bound and obliged to let the same to the said S. Kemble, for a rent of 500l. a year, till he shall choose to take a joint concern with him.

Mr. Jackson was advised, that this decret was reducible as *ultra vires compromissi*, especially as it was not to be conceived, that Mr. Jackson's proposal in the missive of having an option of holding a joint concern, could possibly respect the event of being re-placed in the theatre in his former situation, in consequence of a discharge from his creditors; and it was thought that, if under a rent of 1200l. the free profits were such, that even half of them could bear a deduction of 8l. per week of a salary, as a *præcipuum* to Mr. Kemble, in consequence of Mr. Jackson's having hesitated to impliment, that it was not very reasonable to restrict the rent in all time to come to

500*l.*, subject to a power of extension, by persons not likely to have leisure or inclination for those enquiries that would be requisite for exercising it. In fact, twenty years ago the theatre of Edinburgh alone was let for 500 guineas, when much inferior in point of accommodation and decoration to its present situation, and when the town was much less extended, and the circle of the frequenters of the theatre much more confined. Besides, 500*l.* was scarcely sufficient to pay the interest of the money laid out on the different theatres, far less to yield a profit adequate to such a species of adventure. Mr. Jackson, therefore, brought a reduction of the decree, which Mr. Kemble has not been very forward to meet, at least he has pleaded dilatory defences, and hinted a willingness to allow a decret to pass, in case Mr. Jackson would relinquish his share of the profits. This decret-arbitral, however, which bears date 9th August, 1792, but it is believed was known somewhat earlier, appears to have convinced Mr. Kemble, that he was hereafter in all events to have the theatre at 500*l.* a year.

Upon the 12th April, 1792, Mr. Gibson, the former trustee, disposed Mr. Jackson's sequestered estate to the respondent Mr. Playfair, and

to John King, accountant in Edinburgh, as trustees : and upon the 21st July, 1792, a general meeting of the creditors authorized the trustees to let the theatres of Edinburgh and Glasgow, for another year, either by private bargain or public roup, as shall be found most eligible, it being doubtful whether the patentees would approve of continuing to grant leases by public roup. Mr. James Gibson, who was present at this meeting, protested against delays ; and that a report should be made to a general meeting within four weeks of what passed with the patentees.

Advertisements were forthwith put into the papers ; but notwithstanding Mr. Gibson's eagerness that there should be no delay, no offer was made upon the part of Mr. Kemble till the tenth of August, when Mr. Gibson, in a letter to the trustees, did offer a rent of 500*l.* for a lease of the theatres to Mr. Kemble, or such other rent as should be fixed by the Duke of Hamilton and Mr. Dundas. This last qualification in the offer was obviously nugatory, as it could not be expected that persons in their high situations could submit to canvas what should be a proper sum for the rent of the theatres of Edinburgh and Glasgow. The offer, however, such as it was, came too late ; but as Mr. Playfair had, at a per-

sonal interview with Mr. Kemble, offered him a renewal of the lease at the then rent, and at another interview with Mr. Gibson, had told him he had received offers for the theatres which would be accepted of if Mr. Kemble did not come forward; and as an article had appeared in the *Argus* of the 28th of July, from which it was evident that Mr. Kemble's friends considered it as settled upon the 18th current by the Dean of Faculty, that Mr. Kemble was to get half the property, while Mr. Jackson had any concern in the theatre, Mr. Playfair was convinced that Mr. Kemble relied upon the decret-arbitral, and was determined to offer only such a rent as there suggested; and he had no difficulty to listen to Mrs. Esten's offer of 1000*l.* for the theatres; and he accordingly concluded an agreement with her upon the 10th of August, the fourth article of which is in these words: "That the consent of the most noble Duke of Hamilton, and the right honourable Henry Dundas, who hold the patent of the Edinburgh theatre in trust, be obtained to this agreement and proposed lease; and that unless the same can be obtained, or permission procured to the lessee to act under the patent during the term of the lease, in that case neither party to

remain bound by this agreement, otherwise to remain in full force."

This transaction was intimated to Mr. Gibson in answer to his letter of the 10th of August, where notice was also taken of the verbal intimation that Mr. Playfair had made him, that he would conclude, if Mr. Kemble did not come forward. He also remarked as to the offer of 500*l.*, that Mr. Gibson's knowledge in the business when acting for the former trustee, must satisfy him that it was inadequate; and he adds, "Last year you did not hesitate to declare, that you would shut up the theatre rather than take such rent, or allow any persons whatever to controul the rent. What reason there is for altering your opinion so completely this year, you can best explain."

These transactions were afterwards reported to a meeting of the creditors upon the 3d of September, when the conduct of the trustee received their approbation: and notice was also there taken of an article which had appeared in the Public Ledger of August 28, which would be charged and paid for as an advertisement, which was evidently calculated to hurt Mrs. Esten. It is in these words: "To the public. Kemble writes that he is safe in the Edinburgh theatre; that the

Dean of Faculty assures him no other person shall have the house ; and if any company should open another, he will commit them to prison for sturdy vagrants and vagabonds. They who therefore engage here, will do well to consider this threat."

Mr. Gibson was present at this meeting ; but no disavowal was made there, or in the public papers, on the part of Mr. Kemble, of these advertisements.

In the mean time, application, as is proved by the proceedings of the meeting of the creditors, had been made to the Duke of Hamilton and to Mr. Dundas, for their approbation of the lease to Mrs. Esten. The minutes bear, that "the Duke has given his consent, but Mr. Dundas has not yet returned any answer." Considering, however, Mrs. Esten's personal character, as well as her eminence as an actress, it was not doubted Mr. Dundas's approbation would be signified when his leisure permitted. But it appears that Mr. Kemble availed himself of the decret-arbitral, which certainly had no connection with the transaction between Mr. Jackson's creditors and Mrs. Esten, to state pretensions to the patentees in order to induce them to withhold their consent. The respondents, it is supposed, have not been fully informed of those pretensions ; for they did not

understand, that either his efforts last winter to please the town had been more conspicuous than those of former managers, or that any of the circumstances attending his first year's adventure entitled him to claim the benefit of the patent, and of the theatre, for half the rent that such a person as Mrs. Esten was willing to give. So it was, however, that the application upon the part of the respondents to Mr. Dundas not receiving an answer, at last created some alarm, more especially as it was confidently given out, that Mr. Dundas was determined to give his weight to Mr. Kemble.

Upon this Mrs. Esten took the liberty of writing to Mr. Dundas, and received the following answer :

“ MADAM, *Wimb'edon, Sept. 25, 1792.*

“ I received your letter of the 10th, which I feel I have been too long of answering. If my name has been used to terrify you, it has been used to a very improper, and I am sure to a very unauthorised purpose. I have had different representations and statements transmitted to me on the subject of your letter, not one of which I have read, meaning exactly what you request of me, which is, to postpone till I go to Scotland,

any consideration on the subject, because there I can have leisure to hear both sides of the question. When I agreed to allow my name to be put in the patent, it was to prevent a great deal of heat on the subject of the Edinburgh theatre, which was then a matter of much agitation. I have never considered myself in any other light but as trustee for the public, and my conduct must of course be entirely regulated by what I shall conceive is most likely to contribute to the amusement of the public, in one of its best and most rational entertainments. I am, Madam,

Your most obedient servant,

(Signed) HENRY DUNDAS."

Upon Mr. Dundas's coming to Scotland, an application in writing was made, signifying that the men of business for the respondents were ready to attend him at his convenience. Mr. Dundas, however, signified verbally that he was not to interfere at all in the matter, and that this message might be delivered to Mrs. Esten. On the other hand, it was known to Mr. Kemble, that the Duke of Hamilton had signified to Mr. Gibson, in answer of this date, (September 8, 1792,) to his application in behalf of Mr. Kemble, that his grace had already given his approbation of the lease to Mrs. Esten.

In these circumstances, Mrs. Esten being advised, that no controul could be exerted to her prejudice, proceeded to decorate the theatre and engage performers.

Still, however, reports were circulated, as if Mr. Dundas was adverse to Mrs. Esten having the benefit of the patent. Upon this, Mrs. Bennet, Mrs. Esten's mother, still anxious that there might be no mistake, waited upon Mr. Hepburn, his private secretary, and informed him, that although Mrs. Esten, in consequence of Mr. Dundas's intimated resolution to hear both parties, in which event she had little doubt that the justice of her cause would prevail, had already been at considerable expence in preparing the house, &c. yet, that if he inclined to give Mr. Kemble his right under the patent, that she, rather than be the occasion of further contention, would resign her claim. Mr. Hepburn having communicated the import of this conversation to Mr. Dundas, at his desire wrote the following letter to Mrs. Bennet :

“ MADAM,

“ Mr. Dundas desires me to acquaint you, in answer to the message I delivered to him from you, that it is not his intention at all to inter-

fere in the dispute between Mrs. Esten and Mr. Kemble.

(Signed) ROB. HEPBURN."

Melville Castle, Nov. 22, 1792.

This letter was considered by Mrs. Esten and her advisers as an unconditional declaration of Mr. Dundas's decided determination not to interfere, but to leave Mrs. Esten, with the Duke's consent, (which it was mentioned in the application for his had been given), and his own *non repugnantia*, to make the best she could of her right. The parties, therefore, proceeded to complete the agreement by preparing the lease, a full draft of which was forthwith settled and doqueted by Mrs. Bennet, and the respondent Mr. Playfair, specifying an obligation to execute it on stamped paper, when Mrs. Esten should arrive in Scotland.

The following passage, in the preamble of this lease, proves the weight that was laid by the parties upon this intimation from Mr. Dundas:—
“ And whereas the express consent of the Duke of Hamilton has accordingly been signified in writing to Mrs. Esten ; and Mr. Dundas has signified, by a letter from his secretary to Mrs. Bennet, that he was not to interfere, whereupon both parties agreed to wave the said provision, and hold the agreement binding, being satisfied that

these intimations were fully sufficient to save the parties contractors from all disquiet from the patentees in the accomplishment of the transaction ; and the said Mrs. Harriet Pye Esten has accordingly renounced all exception to the validity of the agreement, and taken possession of the Edinburgh theatre in pursuance thereof.”

Though the bargain between the respondents was now completed, though Mr. Kemble had removed at the expiration of the lease to him and Mr. Jackson, the respondents were alarmed with intelligence that Mr. Kemble was determined to set up a rival theatre in Edinburgh, and in this way, had agreed with the very numerous proprietors of the *Circus* for a lease of that subject, as a proper place for carrying on that adventure, with a considerable party to support him in the project. A protest, therefore, was immediately taken against Mr. Kemble, December 4, 1792, intimating to him, that to act there for gain was equally against law, and against the rights of the theatre-royal of Edinburgh, and that the creditors were disposed to avail themselves of all the powers the law might afford for repressing such a measure.

Mr. Kemble, however, persisted in his purpose, and, about the middle of January, adver-

tised that he was to open a theatre upon the 21st. A bill of suspension and interdict was forthwith prepared for the respondents, and presented to Lord Swinton, ordinary, upon the 19th, in order to prevent Mr. Kemble's proceedings to execute his purpose : at the same time, Mr. Jackson's creditors were advised to raise a declarator of trust against the patentees, in order to have their patrimonial right in the patent ascertained, and the executed summons was produced along with the bill. Mr. Kemble also thought proper, at the same time, to present a bill of suspension, praying for a prohibition against being troubled or molested by the respondents.

The Lord Ordinary immediately heard counsel upon the bills of suspension. The respondents produced the letter of Mr. Dundas's secretary ; but the Duke of Hamilton's original consent having happened to be mislaid, it was denied upon the part of Mr. Kemble, that any such consent had been given, although possessed at the time of the Duke's letter to his own agent, signifying that his grace had given the consent in question to Mrs. Esten. In these circumstances, the Lord Ordinary did not choose to grant an interim interdict, but took the cause to report,

and ordered memorials. In the mean time, the Duke of Hamilton wrote the following letter to Mrs. Bennet :

London, January 21, 1793.

“ I have consented to Mrs. Esten’s acting under the patent for the Edinburgh theatre, in consequence of the lease she has obtained from Mr. Jackson’s trustees.

(Signed) HAMILTON and BRANDON.”

On the other hand, the following letter from Mr. Dundas was produced :

Wimbleton, January 22, 1793.

“ MY LORD,

“ I had determined to take no part in the present disputes about the Edinburgh Theatre, and it is still my wish not to do it ; but if any advantage is taken of any supposed consent given by the Duke of Hamilton, I authorise your lordship, the Lord Provost, and the Dean of Faculty, to act in my name, as you think most expedient for the general satisfaction and amusement of the town of Edinburgh ; and whatever you do I shall approve of ; and I am, &c.

(Signed) HENRY DUNDAS.”

The application upon which this letter was obtained does not appear, nor does it appear upon

what grounds the gentlemen mentioned in the above letter, proceeded in exercising the discretionary power thereby committed to them. This much, however, is certain, that they did not follow out Mr. Dundas's original intention of hearing parties in the first place ; for the respondents were not called before them, nor any enquiry made at them concerning the authenticity or date of the Duke of Hamilton's consent or notification thereof to Mr. Dundas, nor into what had been done in reliance upon the verbal and written intimation from Mr. Dundas, that he was not to interfere. In fact, early as the 8th of September, Mr. Kemble had the best of all evidence, that the Duke's consent was disposed of ; and if he concealed this circumstance from Mr. Dundas, in his after communications, he certainly was guilty of an improper disguise. The following document, however, was forthwith communicated to the respondents.

Edinburgh, January 23, 1793.

“ As authorised by the right honourable Henry Dundas, we hereby consent to Mr. Kemble acting under the patent for the Edinburgh Theatre,

(Signed)

RO. DUNDAS.

HENRY ERSKINE.

THOMAS ELDER.”

Feb. 6, 1793.] Memorials were lodged upon the 29th *ultimo*, and of this date, the following interlocutor was pronounced: "The Lord Ordinary having considered the bill, and memorials *hinc inde*, and heard parties procurators fully thereon, and advised with the lords, passes the bill on caution, and prohibits and discharges the within Stephen Kemble, or any person acting under him, from opening any theatre for the performance of plays, interludes, or other entertainments of the stage, within the city of Edinburgh, or suburbs thereof, or within twenty miles of the said city, all in terms of the statute 10th of George II. c. 28."

Feb. 8.] Mr. Kemble reclaimed, and your lordships, of this date, appointed the petition to be answered, as on Thursday last; which order was afterwards prorogued to Tuesday the 19th current.

In the mean time, a petition was put in by Mr. Kemble, offering, on the interdict being suspended, to consign the interim profits of his house, to be afterwards disposed of by Mr. Solicitor, the senior counsel for the respondents; and this was followed by a minute, offering to refer to the same gentleman the terms of an arrangement for the winter. To these offers, Mrs. Bennet and Mr.

Playfair consented provisionally, till Mrs. Esten could be heard from; and your lordships superseded advising the petition for a fortnight. Mr. Solicitor forthwith directed the interdict to be suspended in the mean time, and the profits of the new theatre to be consigned, subject to his disposal: but Mrs. Esten having taken advice in England, upon the printed papers in the cause, which were transmitted to her, she has, agreeable to that advice, determined to rely on your lordships' judgment, and has directed her counsel to prepare answers accordingly.

These answers are therefore humbly submitted, in obedience to the appointment of your lordships.

In considering the present case, it is humbly thought that none of your lordships can have any difficulty in being clear, that every equitable view of it is in favour of the respondents. When Mrs. Esten entered into the agreement of the 10th of August, there was not so much as the surmise of an objection to the validity of the patent, and she had as little reason to doubt of Mr. Jackson and his creditors having the patrimonial interest under it. It is very clear from the decret-arbitral, that it was considered as a very important object to have it settled, that when Mr. Jackson, by

transacting with his creditors, might recover the benefit of this patrimonial interest, Mr. Kemble should be entitled to share with him in it, upon payment of a rent of 500*l.* per annum. Accordingly Mr. Kemble's friends, in articles in the London papers, exult in this acquisition of the right, as they termed it, to the property : and as one of the patentees had, through the medium of the Lord Advocate, Dean of Faculty, and Lord Provost, given his approbation to a lease to Mr. Kemble and Mr. Jackson, at 1200*l.* per annum, it never could enter into Mrs. Esten's imagination, that a lease at 1000*l.* a year to her could be considered as an abuse by any of these gentlemen, unless she was thought an unfit person to be lessee, which no person has yet pretended. Neither can it be alleged that she was guilty of even the slightest impropriety in interfering with Mr. Kemble, the lease publicly advertised to all the world, and Mr. Kemble did not choose to come forward with an offer, notwithstanding particular intimation both to himself and his agent that he would be too late if he delayed; and when he did make his offer, it was such a one as it is plain he could not expect would be accepted. Her agreement, therefore, of the 10th of August, was certainly every way proper and unexceptionable; and the

condition contained in it, rendering it dependent upon the sanction of the patentees, was certainly becoming and suitable to the powers of controul that it was understood belonged to them, and to the respect due to persons of such distinction.

Again, when she obtained the express consent of the Duke, and first a very polite letter from Mr. Dundas, expressing his intention of hearing both sides of the question, and afterwards intimation to her counsel of a declinature to hear parties, because he was not to interfere at all, and, lastly, a similar answer in writing from his secretary, it is submitted, whether she was not entitled to rely upon its being his final resolution not to interfere, and whether in that case she had not better reason for completing an agreement with Mr. Playfair, and trusting to her being safe in so doing, than the petitioner had last year, when, without any answer at all from the Duke, and with an approbation from Mr. Dundas, he exercised the functions of lessee and manager of the theatre-royal for the season. She trusted that she derived the patrimonial interest from Mr. Jackson and his creditors ; and that after one of the patentees had expressly approved of her acquisition, and the other had signified that he was not to interfere,

it was impossible they could concur to exercise those powers of controul to defeat her acquisition, which every circumstance of the case indicates were the powers that they were understood by all parties to possess, and to exercise which, they had condescended to suffer their names to be put in the patent. On the other hand, before Mr. Kemble had expended a sixpence upon the Circus, or entered into any engagement with respect to it, he was informed of the transaction with Mrs. Esten; and by the Duke of Hamilton's letter of the 8th of September, as well as by Mr. Playfair's report at a meeting of the creditors, where Mr. Gibson was present, upon the 3d of that month, he was certiorated that the Duke had given his decided approbation to Mrs. Esten's lease; and though he has insinuated much, he has not ventured to alledge pointedly that he had any assurance from Mr. Dundas other than that which Mrs. Esten received, viz. that he was to hear parties, and afterwards that he was not to hear them, because he was not to interfere. In these circumstances, Mr. Kemble's hiring and fitting up the Circus as a theatre was a mere adventure, an adventure in every view as unfavourable as can well be imagined. In the first place, he knew it was directly contrary to law; for it was held by all

your lordships, and indeed is not disputed, that though the patent were ever so valid, and the right of the patentees in it ever so absolute, and Mr. Dundas ever so free to give his approbation to Mr. Kemble's acting under the patent, yet as the Duke had refused him his consent, and given it to another, it was to proceed in defiance of the statute 10 Geo. II. cap. 28. for him to open a theatre in Edinburgh. Secondly, his project tended evidently to the ruin of the respondent Mrs. Esten; for he well knew that the audience of Edinburgh was little enough to support one theatre, and that it was impossible that it should support two; so that he must have relied upon the love of novelty, and upon other less obvious principles, for a run in his favour, that would compel her to relinquish to him the field of battle. And it was plain, that in that event, after an immense loss, she could have no other recourse than, under the warranty of her lease, to claim reimbursement from the sequestrated estate of Mr. Jackson, which must be a very poor one if the patent is invalid; and if it is valid, and the patrimonial interest of the patent is in that estate, it will only follow, that Mr. Kemble's attempt was the more unjustifiable and iniquitous.

Under these circumstances, the respondents ap-

prehend, that they have made out a complete title to legal favour, that is, that the law will admit of it, a title to obtain your lordships protection from suffering the consequence of that wrong, which the petitioner has formed a systematic contrivance for inflicting on them, in order thereby to make profit to himself, in open and avowed violation of the public law of the land.

And now your lordships are to consider, whether the respondents were in such a state of legal possession under the patent, as to entitle them to protection, till at least the title is set aside in a regular manner. And here your lordships are to consider the nature of the title upon which the respondents found, and the facts with respect to the possession, which are either notorious, proved, or capable of proof. Their title is not a title of possession, as lessees under the patentees. The patentees never granted any lease, never advertised that the benefit of the patent was to be let by them. They indeed must have known, that they had no powers to grant such lease, otherwise it cannot be doubted, that such a lease would have been applied for by Mr. Jackson, and granted to him: and even laying Mr. Jackson out of the question, the patentees must have considered it as their duty to have provided the public with a

theatre-royal, and to have granted a lease of it accordingly, if they had judged that the circumstances under which they held the patent had called for such a measure. The petitioner, therefore, may make the most he can of this concession, for they freely admit that neither the Duke's letter, nor the letter of Mr. Dundas's secretary, nor Mr. Jackson's former possession, are leases or assignation of the patent.

The title the respondents rest upon is very different. They humbly maintain, that the circumstances stated in the narrative amount to *prima facie* evidence, that Mr. Jackson possessed as truly under the patent. He takes out the patent, no doubt, with the approbation of the patentees. He pays for it, he keeps it in his possession for years as the person principally interested in it. And he forthwith takes possession of, and enjoys peaceably the whole privileges and emoluments which it was the object of the patent to confer. These circumstances certainly do imply something very different from either a tortious possession, or a possession as lessee. To talk of a tortious possession is evidently absurd. Your lordships will not believe, that the noble and right honourable personages who are named in the patent, would suffer themselves to be robbed by

Mr. Jackson, for a course of years, of a patrimonial interest, in the proper exercise of which, the public were no doubt deeply concerned. And as to implying a lease, they afford no indication of the kind. Where was the rent stipulated? where were the terms of entry and removal? where was the communing when the terms of such a right was adjusted? Will it be pretended, that it is competent for the patentees to bring an action against Mr. Jackson for a reasonable rent since the commencement of the patent, and to rank upon his sequestrated estate for the amount? In short, it is humbly thought, that the thing will not bear an argument. Mr. Jackson evidently took possession of the benefit of the patent, as a right belonging patrimonially to himself; and the acquiescence of the patentees in this measure, and every circumstance in their conduct, as well as every fact which had been articulately stated, with respect to the terms upon which the patent was issued, concurs to establish this inference.

Even when Mr. Jackson fails, the patentees do not interfere. His creditors agree with him for a year upon certain conditions; but no lease from the patentees is applied for, and the year expires like the former. Again, when the credi-

tors take the measure of advertising a lease for a year of the theatre-royal, it was naturally felt, that however strong Mr. Jackson's claim to the patrimonial interest under the patent might be, still that as it was understood that he was subject to controul from the great personages that were the patentees, it was proper upon this occasion, to prevent any abuse that might call for their interposition. Accordingly, they contrived an article in the conditions of roup for this purpose, as a reasonable measure to prevent abuse. It was accordingly so esteemed, and the consequence was, a consequence which your lordships will consider as material, that instead of the lease being granted by the patentees, or so much as asked from them, it was granted by Mr. Gibson, the trustee for Mr. Jackson's creditors, to this petitioner; and Mr. Dundas's commissioners, gentlemen equally learned as respectable, instead of finding fault with a deed which was completely absurd and nugatory, if Mr. Jackson had no patrimonial interest in the patent, gave their consent in writing to the measure; including only Mr. Jackson in their consent, because they knew that the lease was intended for his behoof as much as for the petitioner's. In short, it is impossible to interpret the conduct of the patentees, consistently

with common sense, upon the petitioner's hypothesis, that they held in their own right, while every thing that was done in the concern, whether by themselves or others, whether in overt acts or in acquiescence, indicates that Mr. Jackson had a patrimonial interest, and that they had a power of controul.

And when to all this is added the pregnant and pointed statement of the conditional consent, given by Mr. Jackson, to the issuing of the patent, where he makes an express stipulation in favour of the proprietors of the theatre ; and of the still more material letter of the patentees to the Lord Chamberlain, asking the patent as a trust for the parties concerned, which they had been induced to accept at their request ; and when your lordships see that Mr. Jackson, for himself and the other proprietors, made this request, and do not hear it alledged that any other person made it, it is certainly very difficult to entertain a doubt how the fact stood ; and that the title of Mr. Jackson as truster, is sufficiently made out for a bill-chamber question, when followed with possession.

Now as to the possession in point of fact, no subtlety can render it doubtful. Mr. Jackson possessed down to 2d November, 1794, without

any interference from the patentees ; and then the trustee for his creditors, in his right, and vested with his whole real and personal estate, granted a lease to the petitioner, for his own behoof and Mr. Jackson's jointly, to endure till the 2d November last ; and Mr. Dundas, with the advice and assistance of gentlemen at the top of the bar, approves of this measure. It is plain that this lease, instead of being prejudicial to the possession held under Mr. Jackson's right as truster, was a strong exertion of that right. The possession of the petitioner the lessee, was the possession of the trustee for Jackson's creditors, and even the subordinate possession of lessee was communicated to Mr. Jackson in his capacity of joint tacksman. The trustee, therefore, remained in possession so long as the lease to the petitioner endured. It is in vain to quibble about the lease being only a lease of the tenement of the theatre. However an agent might express it, will the petitioner pretend that he agreed to pay 1200*l.* per annum for the tenement ? or that the approbation of the patentees was asked for this object ?

Now the trustee, in exercise of this right, of which he was in possession, grants a new lease to Mrs. Esten, to take effect upon the 2d of November, when the petitioner's lease expired ; and the

patentees, instead of concurring in any act of controul to interdict the measure as an abuse, which, by the by, it certainly was not, and which no fair exercise of a right of controul would have justified them in doing, one of the patentees gives an express approbation, and the other signifies that he would not interfere. This surely ousts the trustee of his possession. Had they been both silent, the lease would have been good, and the possession good; and here there was certainly more than simple acquiescence. There was evidence, that there would be no concurrence to exercising any controuling or restraining power. This was all the respondents required. They asked for no lease, they asked for no assignment from the patentees. They wished for a declaration, that they did not consider the lease to Mrs. Esten as an abuse that would be restrained; and they obtained what was amply equivalent to such a declaration.

Suppose the present question had occurred in February 1790, while Mr. Jackson had been in possession for years under the tacit acquiescence of the patentees, and that he had then produced the patent as his disponee does now, and that the patentees had expressed no disapprobation of his conduct by any act of controul; there is surely

not a doubt but your lordships would then have held Mr. Jackson to be sufficiently constituted in a lawful possession, to be entitled to the protection of an interdict. And it is humbly apprehended, that when the present case is accurately considered, your lordships will find that every circumstance which has occurred at and since Mr. Jackson's failure, has tended to instruct, instead of impeaching the reality of his patrimonial interest in the patent.

If the respondents have been in any measure successful in the preceding deduction, it plainly follows, that the letters of the 22d and 28th of January can have no effect whatever on the present question. After an approbation of one patentee, and a declinature to controul by another, the particular measure to which these acts relate, was no longer controulable or defeasible, even by the concurrence of both patentees. The acts in question certainly amounted to an expression on the part of the patentees, that they were not to controul the lease to Mrs. Esten as an abuse; and in that case, no after-proceeding on their part, tending to defeat that measure as an abuse, could possibly be effectual. Such declarations amount to an obligation on the part of the patentees, and

create a *jus quæsitum* on the part of the respondents. These declarations, therefore, cannot be recalled; and if they cannot be recalled, they cannot be counteracted by future and inconsistent grants in favour of another. There is no after-grant that has ousted the respondents of the possession: they are therefore entitled to retain it under their prior right.

It has been said, that the respondents may have their action of damages against either patentee in case he exceeds his powers, and encroaches upon any patrimonial interest, for which he held the patent in trust. But this observation proceeds upon the hypothesis, that there were not sufficient circumstances to afford *prima facie* evidence, that Mr. Jackson had a patrimonial interest under the patent, for which he and his dispones have a title to obtain the protection of your lordships; and it also requires that your lordships should be of opinion, that the after act of the commissioners of one patentee is of such a nature as to prevent your giving effect to the prior act. As to the first hypothesis, the respondents are hopeful they need add nothing to what has been already stated, as they conceive that they have brought much more than *prima facie* evidence that the patent is not held absolutely; and that even if they were not,

they have averred with sufficient relevancy, to obtain a suspension from the bill-chamber : and as to the latter supposition, they submit it is perfectly clear, that the intimation from Mr. Dundas, that he was not to interfere, followed by Mrs. Esten's acceptance of a lease, resting upon that very declinature, restrained Mr. Dundas from afterwards controuling or defeating the right conferred upon Mrs. Esten ; and that a future grant to Mr. Kemble, which is calculated to defeat or infringe that right to Mrs. Esten, which Mr. Dundas was not to controul, cannot receive the smallest effect from your lordships, while *res sunt integræ*, and Mrs. Esten is in the court of justice defending that right which she had accepted of, in reliance that Mr. Dundas was not to defeat it. It is with the greatest deference, however, apprehended, that there is really no such after grant made in a shape that can be sustained by your lordships. Before the commissioners could properly exercise the powers conferred upon them, it is apprehended they should have enquired with accuracy into what their constituent had formerly done ; and had they done so, the respondents entertain the fullest persuasion, that the document of 23th January never would have been granted :

and before your lordships give it any effect, it is humbly conceived that your lordships are entitled to take every circumstance into your consideration, and allow it no influence inconsistent with any thing that was formerly done or signified on the part of Mr. Dundas ; and in so doing alone, is it possible, that Mr. Dundas's real intentions can be accomplished, which no person can for a moment believe are to vary an iota from what he formerly gave the respondents even the slightest reason to trust or proceed upon.

The respondents, perhaps, ought here to take particular notice of a variety of misrepresentations contained in the petition, as, for example, that it is there said, “ that all that is pretended is, that Mr. Dundas's secretary wrote Mrs. Esten, that he would have nothing to do with her ;” that Mr. Jackson had declared at his examination by the sheriff, “ that nothing was settled as to his continuing in the management ;” that upon occasion of granting the lease for behoof of Messrs. Kemble and Jackson, the creditors had made application to the patentees, “ begging these honourable persons, in consideration of their great losses by Mr. Jackson, and out of the abundance of their humane and liberal disposition, to allow Mr. Kemble to enjoy the patent-right for one

year." But it is hoped they may spare themselves this disagreeable task, for two reasons : first, that the petition, though very ingenious, contains no connected detail of facts, and was certainly prepared in great haste ; and, secondly, that the respondents have endeavoured to supply that defect in the best manner they are able ; so that they are hopeful that your lordships will be thence enabled to detect of yourselves all mistakes. The respondents will therefore trouble your lordships with nothing farther on this head, except to remark, that the state of Mr. Jackson's affairs made out by Mr. Playfair, was a state, properly speaking, of his own intromissions ; and that it is rather singular, that after Mr. Jackson's declaration before the sheriff, an argument should be founded upon those formerly acting for the creditors having made no particular enquiry into the facts, by which Mr. Jackson's interest in the patent might be ascertained, and that accordingly the patent-right was not *per expressum* inserted in the state of Mr. Jackson's affairs, which was then prepared. It is at any rate nowise surprising, that Mr. Jackson should not have been very anxious to press this matter upon the attention of his creditors, and to determine the question against himself, whether

the functions and emoluments of a manager of the theatre-royal were a subject that might be disposed of like any other property, or whether or not the patronage of the right honourable patentees might not, even after his failure, preserve to him some benefit, and some means of support, in the evening of life, from this quarter.

It only remains to consider the plea which the petitioner has now brought forward with so much seeming confidence, that the patent itself is a piece of waste paper ; a plea which, it may be remarked in passing, sounds rather strangely in the mouth of a person claiming a right under this same patent, in consequence of his last year's possession as lessee, and by the consent of the 28th of January, given in his favour by the commissioners of Mr. Dundas. And if the petitioner says as to this, that he repudiates these titles, it is at least equally singular, that the interest upon which he objects to the validity of the patent is allowed to be an unlawful interest, the interest of doing a thing prohibited by the public law of the land, the statute of 10th Geo. II. c. 28. ; yet this interest is his only charge upon which he resists the suspension and interdict craved by the respondents ; so that if your lordships should pronounce the usual interlocutor, finding the letters

orderly proceeded, and therefore refusing the bill of suspension, your lordships would thereby give your high sanction to an illegal interest, which exists but in obtaining an opportunity to violate the law, and to incur penalties and disabilities prescribed by law.

The first answer, therefore, of the respondents is, that the petitioner cannot be heard to open his mouth upon it; that he has no lawful interest entitling him to plead it, no interest, which can receive any countenance from a court of justice.

A second objection has already been suggested in the narrative, viz. that this is not the proper shape to try a question of so much consequence, as the validity of a patent under the seal of Great Britain. In order to try such a question, the summary process of the bill-chamber is certainly utterly incompetent. The slightest title of property cannot be set aside without a process of reduction or declarator, where the forms admit of the fullest investigation, whether into facts, into titles, or into records; and will your lordships suffer a patent under the seal of Great Britain *ex facie*, a royal grant, authenticated by the highest official authority, to be treated as a piece of useless parchment, and that upon an objection started in a court where no investigation can be made?

To claim such a judgment from your lordships is the more extraordinary, that though the commissions of the revenue boards evidently concern offices within the kingdom of Scotland, and should, agreeably to the language of the 24th article of the union, pass under the seals peculiar to Scotland, still the petitioner admits, p. —, that “ the commissioners of customs and excise are all named in one commission for each board passing the great seal of England, (should be Great Britain,) the reason of which is, that the revenue laws of England were extended to Scotland by the act of union ; and every department of the revenue being dependent upon the board of treasury, the same system was established for the whole.” And he triumphantly adds, “ Thus this exception is founded on the act of union itself—a circumstance which ought to give tenfold force to the preceding argument.” Here then he allows, that the extension to Scotland of the revenue laws of England operated virtually an exception in prejudice of the 24th article of the union : yet, in the present case, though the statute of the 7th of the King expressly extends all privileges and regulations, to which any theatre in Great Britain is entitled or subjected to the grantee of the letters-patent of the Edinburgh theatre,

the petitioner seems to shut his eyes to his own admitted necessary consequence, that this extension of English regulations, (for it will not be pretended that there were any Scotch ones), operated by like implication, an exception from the 24th article of the union, and entitled the grant of the office to proceed by the seal of Great Britain, and the offices connected with it. It is plain, that if there is room for supporting the formality of a commission, under the great seal, on the footing of an implied exception from the 24th article of the union, there is an end to pleading, that the present is a clear case, and your lordships may safely, *de plano*, find the patent to be waste paper. Your lordships will please to consider a moment how you would treat in the bill-chamber a plea to the validity of an order from the commissioners of the excise, or to proceedings of the collectors of the revenue, founded on their commission passing the great seal, instead of the great seal of Scotland. Yet might not every argument be used in such a case by the objector, that can here be used by the petitioner? nay, he might urge, that the members of the court of exchequer that were to judge of these extended revenue laws, held their offices by commissions passing the Scots seals; so that it was absurd to talk of the

extension of the revenue laws operating an exception from the union as to grants of revenue offices, since the extended laws became Scots laws, and were administered by a Scots judicature, as much as the ancient municipal laws of the country. It is believed, however, your lordships would have no difficulty to tell the objector, that you would not discuss a plea of this kind in the bill-chamber. That if he was advised, he ought to try the effect of a declarator, or in the course of a discussion, after letters of suspension came into the outer-house; but that you would never listen to an objection of so ungracious an aspect, where it could not be thoroughly investigated and leisurely tried.

In fact; it is far from being clear, that even an admitted irregularity would void the grant to all intents and purposes. For example, suppose your lordships were to be of opinion, that the patent ought to have passed the Scots seals, would you on that account sustain complaints against Mrs. Esten and her company, founded on the 10th Geo. II. c. 28.? It is believed you would consider the irregularity as very far from rendering it waste paper, but that the patent remained a title on which they were in safety to rely against penalties of that statute.

In fact, the statute of 27th Henry VIII. c. 3,

which prescribes the progress of writs through the offices in England, instead of providing a nullity for informality, enacts only penalties for deviating from the directions of the statute, *vide* sect. 3. In short, the legislature was justly cautious of making any provision that might derogate from the authority of the great seal, or render it competent to captious litigants, to enquire farther, and object to the regularity of the steps that preceded the affixing of it. The proper remedy for official irregularity, is the punishment of the officers who commit it; but it certainly would be very hard, and very inexpedient, were the subject, when perfectly innocent of any wrong, to be ruined, (as would in the present case be the effect of sustaining the petitioner's objection,) merely because the proper officer had committed a mistake, while at the same time it was admitted, that the grant did proceed from the sovereign, and had received the stamp of the highest authority in the state.

The respondents, however, must take the liberty of submitting to your lordships a few observations which have occurred to them, with respect to the propriety of the mode in which this and the former patent were expedited, at the same time acknowledging, that these observations are offered without any of that investigation and research,

which the treatment of so important a question would require ; but for this they are not answerable, considering the place and shape in which the objection is brought forward.

In the first place, it is certainly very properly observed in the petition, that the channels through which the acts of the sovereign are stamped with the authority of the state, are prescribed upon this ultimate principle, that men in the highest responsible situations, and fully competent for the purpose, should have an opportunity of inspecting those acts of the sovereign, of forming an opinion with regard to them, and of suggesting in time to the sovereign any objections that may have occurred, before they receive the seal of authority. Now, it must certainly be admitted, that the patents for the Edinburgh theatre were expedited in strict conformity to this principle. The applications for the patents were made to the Lord Chamberlain, who is neither an English nor a Scotch officer, but an officer of the crown for the whole united kingdom, and who is at the head of that branch of police in both countries, which respects public exhibitions and entertainments. In consequence of this application, and of the arrangement of the discussions that ensued, the Lord Chamberlain advised his Majesty to grant the pa-

tent; and accordingly his Majesty grants a warrant for that purpose; and this warrant is officially transmitted from the Lord Chamberlain's office to the Attorney-general, who prepares a bill, which is superscribed by his Majesty, and forms a warrant for the secretary of state to expedite, under the royal signet, a warrant to the privy seal, whence a warrant is in like manner expedite for the great seal, where the patent was itself prepared, and received the impression of the great seal from the Lord Chancellor, who is not merely, as stated in the petition, a lord of parliament, and a judicial officer of state for England, but is a great judicial magistrate for the united kingdom, and is entitled by his office to preside in the court of session, which is the supreme civil tribunal peculiar to Scotland: and as officially president of the House of Lords, he is president of the supreme court of appellate jurisdiction, for this part of the kingdom, as well as for England.

It is submitted to be perfectly obvious, that the patent could not be more properly considered, than by issuing through this channel. The Lord Chamberlain was nearest the source, and being an officer of state for Scotland, as well as for England, and being entitled by the statutory authority, under which it issued, to controul and

regulate the exercise of the grant, it was certainly most proper that it should receive his inspection ; and if it was proper he should exercise this function, it seems to follow of necessity, that it should proceed afterwards through that course with which his office communicates.

In this way it proceeded to the Attorney-general ; and unless some authority is produced for showing, that a warrant ever issues through the Lord Chamberlain's office to the Lord Advocate of Scotland, it seems impossible to stir a doubt of the propriety of this course. A new official course, and contrary to an established one, ought not to be introduced without an act of parliament ; and in point of principle, unquestionably the attorney-general of England was officially better fitted to judge of a patent for a theatre, which was to be entitled to privileges, and subject to regulations, known only in England, than the Lord Advocate for Scotland was, who never could have had occasion officially to prepare or advise such a patent.

It is besides a mistake to suppose that the Attorney-general may not *virtute officii* perform most important acts that affect Scotland, and that without any participation of the Lord Advocate. A writ of error returnable in parliament, cannot be

obtained without the fiat of the Attorney-general, against a judgment of a court of law in England; and when of late years a writ of error was demanded against judgments of the court of exchequer in Scotland, it was found necessary to obtain the same fiat, otherwise the writ would not have been expedited from the proper office upon the fiat of the Lord Advocate for Scotland. In the same way, if a warrant passing through the Chamberlain's office, for preparing a bill, could not properly be directed to the Lord Advocate, but only to the Attorney-general, there certainly cannot be a doubt, that it was proper it should thence go to the Attorney-general, and so proceed in its natural course to the office of the great seal, where the greatest judicial magistrate of the united kingdom stamps the grant with the authority of the state.

The petitioner seems to hint, in treating of the case of patents for new inventions, that there should have been a double patent, two signs manual, and two official progresses to the different seals. But if it be considered, that the Chamberlain was here the proper officer; and that according to the channel the petitioner himself points out, there is no communication between the office of the Chamberlain and the Lord Advocate for

Scotland, it must strike your lordships, that the measure suggested would be equally inconvenient and anomalous. Suppose the Chamberlain, with the Attorney-general in connection with him, were to advise one form, and the Lord Advocate another, would not this be a very awkward and unnecessary collision, since the form adopted in the Lord Chamberlain's office ought to prevail, as he is the proper officer of the united kingdom, that has the charge of regulating theatrical representations, and those that exhibit them.

And if it be contended, as is perhaps the more natural inference from the arguments in the petition, that neither the application nor the warrant should have passed through the Chamberlain's office, but simply through the routine stated in the petition, it is submitted that this too would have been manifestly improper and derogatory to that inspection and controul over theatres, which is intrusted to the Lord Chamberlain by the constitution, and preserved by the act of parliament authorising the Edinburgh theatre.

It is submitted, therefore, that, to all appearance, the patent is in a regular and constitutional course, and that no reasonable objection can be made to it upon this head.

The only question, therefore, is, how far this

course is not repugnant to the 24th article of the union ; and upon this point the respondents have already submitted to your lordships an answer with which the petitioner himself furnished them, viz. That the Scotch board of excise received their commissions of office through the seal of Great Britain, upon a principle that applies *à fortiori* to the present case ; the extension of laws and regulations known and established in England and Scotland—laws, by which the board was regulated in the one case, and the theatre in the other. He says the boards of revenue are subject to the treasurer of Great Britain, and so are theatres to the Chamberlain of the united kingdom.

The respondents must, however, submit farther, that by the said article of the union, it is provided, that all public acts which concern the whole united kingdom, must pass the great seal, and not the seals of Scotland. Now, surely in this case the grant concerned the whole kingdom. It is a grant made in pursuance of a British statute, creating an exception to the existing general law, by which no theatre could be authorised, except in the neighbourhood of the king's residence. This, therefore, was a public measure, by which the general police of the nation was in

a certain degree affected ; and both upon the words and upon the principle of the article of the union, it was proper it should receive a stamp of authority from a seal which belonged to both parts of the island, and was recognised in both.

The respondents must request your lordships' particular indulgence for the above observations ; which are offered, in the first place, in obedience to your appointment ; and in the second place, with a view of showing, that when the question comes to be tried in a proper shape, it may admit of considerable research and investigation, and is by no means of that easy and superficial discussion which can admit of being settled summarily in the bill-chamber.

In respect whereof, &c.

ALLAN MACHONCHIE,

The lords gave their opinions on the foregoing petition, answers, and minute : they confirmed the interlocutor, and the new theatre was again shut. An appeal was immediately lodged, for the determination of the House of Lords. I must therefore, of necessity, drop this subject, only adding, that the validity of the patent was never argued by the Lords of Session ; they confined them-

selves merely to the possessory right, and on that ground only granted the suspension. I understand that Mr. Kemble does not intend to proceed in the appeal; the possessory right being confirmed, Mr. Jackson is now firmly seated on his mimic throne. The public were so very much disappointed in this decision of the Lords, that in a few days the following petition to his Majesty was signed by the Lord Provost, magistrates, and town council of the city of Edinburgh, the Lord Advocate, the Dean of Faculty, and near one thousand of the most respectable inhabitants.

TO THE

King's most Excellent Majesty,

THE HUMBLE PETITION of the Subscribers,
Inhabitants of your Majesty's City of
Edinburgh, and of the Neighbourhood,

Sheweth,

THAT the inhabitants of your Majesty's city of Edinburgh, and of the neighbourhood, having been long attached to dramatic entertainments, humbly presume to approach your Majesty, in the hope that you will be induced to grant the request they now make, which is, to secure to

them the proper enjoyment of their favourite amusement of the theatre.

That in consequence of an act of parliament, passed in the year 1767, your Majesty, your heirs and successors, were authorised to grant letters-patent for establishing a theatre in the city of Edinburgh. In consequence of this authority, letters-patent were granted in favour of Mr. Henry Davidson, solicitor in London, who conveyed the same to Mr. David Ross, comedian. Mr. Ross afterwards conveyed the same to Mr. John Jackson.

These letters-patent expired in the year 1788, and new letters-patent were, upon the 19th day of August of that year, granted in favour of your Majesty's right, trusty, and entirely beloved cousin, Douglas, Duke of Hamilton and Brandon; and your Majesty's right, trusty, and well-beloved Henry Dundas, of Melville-castle, in the county of Edinburgh, to endure for the space of twenty-one years, from the 29th day of September, 1788.

That your Majesty's petitioners are informed, that the said letters-patent are null and void, the same having passed the great seal of Great Britain, in place of the seal appointed to be used in

Scotland, by the treaty of union between the kingdoms of England and Scotland. This nullity is founded upon the 24th article of the said treaty, by which it is provided, “ That a seal in Scotland, after the union, be always kept and made use of in all things relating to private rights or grants which have usually passed the great seal of Scotland, and which only concerns offices, grants, commissions, and private rights, within that kingdom.”

That besides this nullity in the patent, it is otherwise rendered ineffectual. The most noble and right honourable patentees are by the patent invested with equal powers for the establishment of a theatre in the city of Edinburgh. This can only be done by their joint consent ; no individual act of either of them can be of any avail ; and they have differed in opinion as to the disposal of the patent : it thereby becomes, to all intents and purposes, as completely ineffectual as if it had never existed.

In this situation, a petition has been presented to your Majesty, in the name of the right honourable Thomas Elder, as lord provost of this city ; the right honourable Robert Dundas, as lord advocate for Scotland ; and the honourable

Henry Erskine, as dean of the faculty of advocates ; praying, that a new patent may be granted by your Majesty, to be held by the persons holding the offices of Lord Provost, Lord Advocate, and Dean of Faculty, as trustees for the public of Edinburgh : and in case the same person shall at any time hold both the offices of Lord Advocate, or that any of the persons before-mentioned shall refuse to be a patentee, that in either of these cases the deputy keeper of your Majesty's signet for Scotland shall be a patentee, until the said offices shall be again held by different persons, or until some person shall be appointed to succeed the patentee who had refused to accept.

As your petitioners are satisfied, that the only way of securing the proper enjoyment of theatrical performances in this city, is by vesting the patent in the hands of trustees for the public ; and that the persons holding the offices of Lord Provost, Lord Advocate, and Dean of Faculty, and in either of the cases before-mentioned, the deputy keeper of your Majesty's signet, are, from their official situations, the most proper for holding that trust, we humbly pray, that your Majesty may be graciously pleased to grant the request of the petition made by the Lord Provost,

Lord Advocate, and Dean of Faculty, in behalf of the public.

Your petitioners therefore humbly pray your Majesty, that your Majesty may be graciously pleased to grant the request of the petition presented by the right honourable the Lord Provost, the right honourable the Lord Advocate, and the Dean of the Faculty of Advocates, in behalf of the public of Edinburgh.

And your petitioners, as in duty bound,
Shall ever pray, &c.

This, I believe, is an uncontrovertible testimony of the degree of estimation in which Mr. Jackson stands with the public. It may appear an act of cruelty in me, to bring any charge of a private nature against him here. Shakespeare says—"Oppress not a fallen man, his faults lie open to the laws, let *them* not *you* correct him."

I feel the propriety of that remark; but when he made that private con-

cern ultimately public, and flew to the black letter of law to take an advantage of me, leaving me no other mode of justification but this reference to the public, I do not feel myself improper in thus explaining a most dishonourable transaction on his part, and, in its consequences, cruel and oppressive to me.*

In the summer of the year 1787, I entered into an engagement with him to perform in Edinburgh the ensuing season. In the interval I was retained at the Royalty Theatre in London, and finding that I could not settle some pecuniary embarrassments that had for many years distressed me, and fearing they would operate in Edinburgh to the hindrance of my business in the

* “When should David take up his sling against Goliath, but when he found him defying the hosts of Israel?”

theatre, I formed what I thought a laudable resolution to try my fortune in the East Indies. At that time I was fretted by many disappointments ; and though I had established a leading trait in my character, that remissness, and even neglect on common occasions, I was ambitious of fixing another of spirit and intrepidity. I wrote to Mr. Jackson, informing him with my intentions, that he might provide a performer in my place ; and at the same time requesting, that in consequence of my embarrassments he would dissolve my engagement with him. This letter brought him to London ; we met at the Royalty Theatre, and in the presence of Mr. Griffith the prompter, and Mr. Burtoft the house-keeper, I said to him (after having talked the business over)—“ Now, Mr. Jackson, you see the necessity of my going to

India, and on that condition only do I request you would dissolve my agreement with you." He replied in their presence—"Well, sir, since your affairs are in this situation, I do let you off; but remember, it is on the sole condition that you go to India; if you play any where else, sir, previous to your going there, I shall sue you for the penalty." I thought this fair and kind, and not suspecting him capable of any artifice, or duplicity, and having a something in my temper which often deprives me of the maxims of human prudence, I neglected to demand this declaration under his hand; but repeated to Mr. Griffith—"Now, sir, you'll take notice on what conditions Mr. Jackson has dissolved my agreement." I boldly and honestly aver he gave me this promise.

On the 4th of April, 1788, I sailed

for India, and remained there till the year 1789.* In January, 1792, I en-

* Some circumstances respecting Mr. Lee Lewes's theatrical pursuits in India having been anticipated in Mr. Symonds's publication, it is unnecessary to trouble the reader with a recapitulation of particulars already detailed. The editor confesses to have no knowledge whatever of the correspondence published on that head; he, therefore, can be no farther a judge of its correctness, than from the recollection of personal communication with his late father: thus far, however, he can speak with confidence—that from the flattering reception Mr. Lee Lewes met with from the first ranks of society in India, and the many gratifying testimonies of personal friendship which were shewn him, it was a circumstance extremely to be regretted, as it was severely felt by him, that the omission of a previous requisite arrangement, rendered his laudable exertions to improve his fortune by the exercise of his professional talents fruitless: he did not however retire from Asia without having had the satisfaction of displaying his abilities; and it was a consolation to him, under the unfortunate prohibition which

gaged with Mr. Kemble in Edinburgh. I thought that I possessed the right of thinking for myself relative to the dispute between Jackson and Kemble, and never concealed those thoughts, which were by no means in favour of Jackson. Mr. Jackson, in revenge, formed the resolution of arresting me for the penalty of my articles, 200*l*. I must here wish it to be particularly noted, that I

he experienced, that his talents were fully appreciated ; and that he left the Asiatic territories regretted and esteemed.

The unpropitious result of his efforts evinces, that though men assume to be architects of their own fortunes, yet the frequent defeats of their industry and contrivance, sufficiently confute that bald pretence, and prove that there is a something above them which can either blast or prosper their attempts.

“ There is a tide in the affairs of men,
When taken at the flood, leads on to fortune :
Omitted, all the voyage of their lives
Ends in shallows and in miseries.”

had been three years in England and three months in Edinburgh, without his having made the least claim upon me : yet, on the morning of the Cannongate charity benefit, Mr. Playfair, the trustee for the creditors, actually held me to bail for the penalty of 200*l.*, knowing at the same time, that Mr. Kemble, the only person to whom I could think of applying, was in Glasgow. But Mr. Woods, with that philanthropy that marks his character, stepped forward to my relief, and I am proud of embracing this opportunity of thanking him for his kindness. Let Mr. Jackson look at this gentleman, and learn what line of conduct for upwards of twenty years has secured to him universal estimation in Edinburgh—and, if he can, let him feel the wide difference between general benevolence, and unprovoked enmity.

This cause is at present pending in a court of law ; I can now, therefore, say no more on the subject, farther than that Mr. Jackson never communicated to the former trustee of his estate, Mr. Gibson, that I was 200l. in his debt ; it doubtless slipped his memory, and this must serve him, as it has before served others, for an excuse. Whatever the issue may be, I trust it will be found I have nothing to reproach myself with in this transaction with Mr. Jackson, nor in the relation I have thus given of it.*

* I am here induced to detain the reader while I relate an anecdote of General Ogle : it is so singular an instance of friendship, and presents so striking a contrast to the conduct of the person which I have just recorded, that I hope it will not be deemed extraneous or uninteresting.

When I was in Bengal, one day after dinner General Ogle's name happened to be mentioned, and with that respect which ever awaits the me-

I shall now add a similar instance of Jackson's being eminently versed in the

mory of a noble-minded man, a pleasant companion, a sincere friend, and a most indulgent parent. His only failing (which in these fashionable, dissipated times, the fashionable will not call a fault) was his unconquerable attachment to play. I there took an opportunity of mentioning an anecdote respecting the General, which I knew to be authentic.

A few weeks before he was to sail for India, he constantly attended Pain's, in Charles-street, St. James's-square, where he alternately won and lost large sums. One evening there were before him two wooden bowls full of gold, which held fifteen hundred guineas each ; and also four thousand guineas in rouleaus, which he had won : when the box came to him, he shook the dice, and with great coolness and pleasantry said—Come, I'll either win or lose seven thousand upon this hand, will any gentleman set me the whole ? Seven is the main. Then rattling the dice once more, cast the box from him, and quitted it, the dice remaining covered. Though the General did not consider this too large a sum for one man to

deep mine of theatrical policy ; and with a general remark, and a few curi-

risk at a single throw, the rest of the gentlemen did, and for some time he remained unset. He then said, Well, gentlemen, will you make it up amongst you ? One set him 500l., another 500l. —Come, says he, while you are making up this 7000l., I'll tell you a story. Here he began to relate a story that was pertinent to the moment ; but perceiving that he was completely set, stopped short—laid his hand upon the box, saying, I believe I am set, gentlemen ? Yes, sir. Seven is the main. He threw out ! then with, astonishing coolness, he took up his snuff-box, and smiling, exclaimed, now, gentlemen, I'll finish my story, if you please !!

This single instance will serve to shew how deep he played, and how deeply rooted was that passion, which at once unnerves both soul and body ; and like a rapid torrent, irresistibly hurries a man to inevitable ruin : every preceding night of losses is only a pledge of what may be expected the next. But now, men blush not to shake a forest of trees with their elbow, and to bury in the grave of their own destruction an amiable and innocent family.

ous anecdotes, dismiss Mr. Jackson. Some months previous to his bank-

At this period the General was overwhelmed with debts of honour, and also debts for which I have not an epithet. If claims upon a man contracted at the hazard table only are to be called honourable; surely a debt standing in the ledger of an honest dealer, has a more true title to an honourable epithet, than any obligation to a dealer in chance.

The General had in his possession, as a dernier resort, a prodigious large diamond-ring, of one stone, and supposed to be worth twenty-five thousand pounds. This he had committed for sale: several patterns of it were made in paste, and handed to every diamond merchant in the kingdom, and to all others likely to become purchasers. Previous to the day of sale, Count Kelly said to him—General, your ring is too high-priced for an individual like me; but I'll give you eleven thousand guineas for it. This offer of course was rejected, on the reasonable supposition of its selling for 20,000*l.* at least. But on the day of sale, a foreigner examining the ring with great attention pronounced that there was a

ruptcy, Mr. Moss, an actor in his company, had taken his note of hand for

capital flaw in it, and made so many other seemingly reasonable objections, as bars to its being a perfect stone, so depreciated the value, and so cooled the zeal of the bidders, that it actually sold for no more than 7000*l.* ! This sum was of little consequence to him ; but immediately divided, as far as it went, to the discharge of his debts.

I am now coming to that part of my story, which I think will evince the most exalted, and disinterested friendship.

The ship that was to take the General to India, was ordered round to Portsmouth, there to wait for, and receive him. General Ogle had appointed a particular friend of mine, Mr. Lambert, his private secretary : as they were stepping into the chaise that was to take them on the way to Portsmouth, the General was arrested for 1300*l.* by Mr. Armstrong, sheriff's-officer, whose indulgence on that occasion, as far as consisted with his own safety, was marked with singular tenderness and humanity. Had the General been careful he might have avoided this accident, having had good intelligence that such a business was in em-

upwards of 40l. which sum was for arrear of salary; when the note became

brought; and to the honour of Mr. Pain, he had particularly cautioned him to be careful of his person: and though the General owed him at that time 1500l., he said, Dear sir, I am so anxious for your safety, that I most ardently press you to remain in my house till you embark, where you shall be accommodated to your wishes—and pray excuse me, accept this of me till your return from India, putting 200l. in bank notes into his hand. The General waved accepting the substance of Mr. Pain's solicitation; nor was his feeling hurt, from the honest, open sincerity, which accompanied the friendly offer.

The embargo laid on the worthy General by the sheriff of Middlesex, had nearly completed his ruin. Like a man in a state of apathy, he knew not what to do. He applied first to one friend, then to another; but soon found it was not easy for a man in duress to raise 1300l.; and that those are but melancholy moments, when under constraint we are waiting for the impulse of friendship. After two days ineffectual endeavours to extricate himself, Government heard

due, Moss was under the necessity of enforcing payment by legal process.

of his situation ; but so far from assisting him, he had notice, that if his detention was likely to continue many days longer, his services in India must therefore be dispensed with. This was a thunder-bolt to him.

Here, my friend Mr. Lambert, his appointed secretary, whose fortunes hung upon the General's, stepped forward to serve him, with that disinterested zeal that must ever stand permanent in the lists of friendship. Without acquainting the General with his intention, animated with the noblest sentiment, and a contempt of his own interest ; viewing the critical moment with an eye of enthusiasm towards the interest of his friend, he went to a certain clergyman, and said to him—Sir, I have often heard you express a desire to send your son to India—Yes, Mr. Lambert, but I find I have not interest to complete my own and my son's wishes in that respect ; nor is my purse consequential enough to command influence that way. Can you compass a thousand pounds to serve your son ? I can, upon any reasonable proportionate view. You know

This was not so painful to Jackson, who was somewhat too fond of the

that General Ogle is appointed to India? I do; and with such a patron as him my son's pursuits might be complete, as he is burning to be a soldier.

Here my friend related to him the particulars of the General's dilemma, and concluded thus—Now, sir, if you will give me 1000*l*. I will relinquish my appointment to your son; he shall embrace my situation and interest with General Ogle. So it was; the money was in twenty-four hours paid to Mr. Lambert, with which he liquidated the demand upon his friend, and procured his liberty.

The moment was now so critical with the General, suspecting Government either had, or would supersede him: he repaired instantly to Portsmouth, with the young gentleman, who had not time completely to equip himself for the voyage. When they arrived at Portsmouth, the ship was actually weighing anchor: this left not the shadow of a doubt that she carried out with her a conditional supersedence, had he not been so fortunate as to get on board the moment he did.

purse-exhausting litigation of the law ; and to pursue the metaphor with a vulgar phrase, he meant to have *nailed* Moss. Jackson never considering the expence of protraction, and defending

As I have told this story here, so I was relating it to a numerous company, at my friend Mr. Lambert's table, in Calcutta. On the conclusion of it, Lieutenant Pollard said, Mr. Lewes, though the business you have communicated happened 15000 miles from hence, I will vouch for its truth, as I am the person who have now to boast of General Ogle's friendship, through that untoward circumstance.

This declaration no less astonished me, than it did the rest of the company ; but it was a pleasing reflection, that I had so good a voucher for such an extraordinary event.

In recording it here I think I have done but common justice to my friend ; for it is an action, the remembrance of which should not descend to the grave. Acts of philanthropy should never be obliterated, nor even one ray of their lustre diminished.

to the last moment actions of this nature, even for 5*l.*, was never alarmed, till the *capias ad satisfaciendum* was issued, and had even then a resource to protract still further, by bringing a writ of error before the *Ca. sa.* or *Fi. fa.* was executed. Moss, finding there was no possibility of bringing the suit to a termination previous to his Haymarket engagement in London, was under the necessity of borrowing a sum of money from a gentleman in Edinburgh, who undertook to conduct the business with Jackson in his absence, and on the success of the issue was to repay himself. In a few weeks Jackson became a bankrupt; proceedings of course stopped. When Jackson shewed a disposition to settle with his creditors, that is, as many as he could get to take ten shillings in the pound, this gentleman, Moss's friend, was applied

to for that purpose: "No," says he, "Jackson, I dare say, will some time or other pay twenty shillings, and I will not compound." "Well," replied Jackson's agent, "if you will not, we must endeavour to fight you another way." What this other way was, that was to shake the honest and just claim of Moss, was at this moment inexplicable to his friend, who had lent him the money on the issue of the suit. I must explain the order of this honest battle. It must be previously, however, mentioned, that at the period of Jackson's bankruptcy, Moss was under articles for two years; but concluding (and as it in fact turned out) that Jackson would no more resume the reins of government, and very properly not considering himself as Jackson's *horse*, *ox*, or *ass*, to be turned over by his trustees to the succeeding manager, he

sought for a new engagement, which he obtained, and now enjoys in Dublin. The reader, keeping this in his mind, will be able to form a proper judgment of the equity of this contest, which was to punish Moss and his friend for refusing to take ten shillings in the pound. In the Edinburgh term, January 1793, Moss was cited to appear in one of the courts in Edinburgh, to answer to Mr. Playfair, trustee for the creditors of Jackson. The calendar of causes being stuck up in the open court, Moss's name struck an observer as informal, he not then being a resident in the country, nor having any property there. Being acquainted with the gentleman who had advanced Moss the 20l., he mentioned this circumstance to him: at that instant it struck him that this was the sickening blow meant to annihilate Moss's claim. His suspicion was just,

for this was an action to recover the penalty of 200*l.* from Moss, for breach of articles ; and had not this gentleman immediately put in an appearance for Moss, (which I affirm at this moment, March 20, 1793, is unknown to Moss,) judgment would have gone against him by default. Playfair, as well he might be, was astonished to find that any one had taken up this impudent challenge. Playfair had the boldness to bring this cause before Lord Abercrombie, and Moss's friend had the honest courage to meet him there. The just plea of Jackson's incapacity to fulfil his part of his agreement with Moss ; nay, in fact, having completely broke it by not paying him, was not heard, as Lord Abercrombie declared the whole proceeding informal on account of Moss's non-residence in the country, and therefore dismissed the cause.

Observation. Had not an appearance been put in for Moss (which was mere accident), the cause would have gone against him by default ; and this was the manœuvre, the 200l. was to be a set off against the 40l. But Jackson knew nothing of this !! He was neither the plotter, nor the pursuer. Oh ! no !—Brutus is an honourable man ! Yet Brutus attended the hearing of the cause between him and me, before Lord Dreghorn ; and his lordship, seeing Jackson, asked him (not upon his oath) if what I said was true, respecting his verbally letting me off in London before the witnesses I have mentioned. Now mark reader, like the guilty Hindoo,* he tongued his lips, stammered,

* There is a mode of trying culprits in India, which I saw, called the *Trial by Rice*. When a master has been robbed, all the servants are assembled, and questioned—of course they all deny the

and said No ! I was near him, and tented him to the quick. If there is

charge. A bowl of rice is brought, every man takes a handful, and fills his mouth with it, then masticates and swallows it ; and such is the effect of all-appalling conscience, that the thief cannot secrete saliva sufficient to moisten the rice, he cannot swallow it, and is so detected.

A similar custom prevails in our West-India-Islands. To discover a thief among the negroes, in their Calabash, or Barracoo, (a bowl made out of a dried pumpkin,) is put some water, a little rum, and about as much earth as can be taken between the finger and thumb ; they are ordered to drink it : the thief, sooner than swallow his *mother earth*, rejects the draught, and suffers the punishment. Some of the guilty have been hardy enough to drink it, but conscience soon after pined them to death. This simple mode of trying the ignorant Hindoo or African, differs very much from the Bow-street method, where the ignorant are hardened, and the wicked refined in their wickedness. In this opinion I am not singular ; for, about the year 1772, sir John Fielding was so very officious as to attempt a controul over the

any truth in Lavater, if in the countenance we can decypher the deepness of dissimulation ; if in the eye we can trace the secret purpose of the mind, I saw what was reserved, subtle, and desperate ; I saw a mutiny of troubled thoughts, and his countenance was a

stage. He sent official letters to the managers of each theatre, Mr. Garrick, and Mr. Colman, advising them not to perform the Beggar's Opera, as he was convinced that the moral of the opera tended to increase, rather than suppress, the number of nocturnal depredators. Cunning Davy (who then had no operatical company, Vernon excepted) joined in opinion with the worthy magistrate, and actually sent him the following answer, that—"highway and street robberies were now so very alarming, he met sir John's idea in part, and should so far contribute to remedy the evil, as not to hold up in his theatre any representation that might in his (sir John's) opinion contribute to increase them." What answer did the laconic witty Colman return ? I was

mirror that shewed his heart. Simple truth in the hallowed garb of intrinsic purity sat in his aghast face ; his viscous tongue, like the viperous shirt of Nessus, cleaved to his palate. For the vice-gerent of God, that incorrupt monitor, conscience, refused to approve his answer ; and the monosyllable *no*

on the stage at rehearsal, when Colman received sir John's letter. After reading it he held it up to the whole company, and exclaimed—"By G—d this is laughable, here's sir John Fielding attempting to reform the stage. Here, Joe, (Younger the prompter) give me ink and paper." He wrote the following answer, which was handed about previous to its being sealed, and sent by one Symonds, a porter of the theatre.

"Mr. Colman's compliments to sir John Fielding, he does not think that his house is the only house in Bow-street where thieves are hardened and encouraged, and will persist in continuing the representation of that admirable piece of satire, the Beggar's Opera."

came out of his mouth parched from the burning mint of falshood.

“Occultum quatiens animo tortore flagellum.”

JUVEN. Sat. 13.

This cause has now been terminated by Lord Dreghorn, who found me in the full penalty of 200l. I appealed to the Lords of Session, and they, feeling the hardship of my parole evidences in England not being admissible according to the laws of Scotland, reduced the fine to 50l.—So stands the account betwixt this very honest, conscientious man, and myself.

— — — — — “If

In vain the gibbet or the pil'ry stands,
To check the wretch who breaks all social bands,
If laws are dup'd, 'tis nor unjust nor mean,
To seize the proper time for honest spleen ;
For there are crimes which bench nor judge can
awe;

That sport without the limits of the law.”

I shall conclude my history of the

Scotch stage by observing, that the dispute about the Edinburgh patent terminated in favour of Jackson, and Kemble now rents it of his creditors. The rent, I believe, is the enormous sum of 1000*l.*, besides 200*l.* per annum to Mrs. Esten for giving up the theatre to him.

To avoid digression as much as possible in the foregoing account of the Scotch stage, I have omitted many relative circumstances, which I shall now introduce under the title of

SCOTCH ANECDOTES.

And at the head of the list JACKSON.

I have already said he was an unnoticed stage-pretender. We also find him enrolled among dramatic authors, laying claim to a play called the British Freeholder.

Of all the species of coxcombs that obtrude their impertinences upon the

public, a literary coxcomb is the most ridiculous, even supposing the work to be the genuine and original production of his own brain. In this remark I feel an application to myself; but after this honest confession, I hope not to have my impertinence thrown in my teeth. But what animadversion can be too severe to lash a fosterer, who, totally destitute of ability to beget a brat of his own, even though ever so rickety, will shew the offspring of another, present it impudently to the public, and solicit their patronage and protection for the child of his adoption? The unfortunate Savage, a writer of merit, and whom an unnatural mother had most unaccountably abandoned to want and misery, had written a comedy but a little time before his youthful folly had engaged him in a night-brawl at a tavern, when a person was killed,

and he being poor, and wanting the means to stop the mouths of the sordid witnesses of the dreadful fact, was singled out to bear the whole guilt, and was fully committed. But while he remained in prison, being forsaken by most of his former acquaintance, and professed friends, he sent for Mr. Christopher Bullock, a comedian, who had, he believed, some influence with the manager, Mr. Highmore, to bring on his play, and see it properly cast ; not despairing that the royal clemency would interpose in his favour, should his country find him guilty of the act of which he stood charged. Mr. Bullock undertook to execute to the best of his power what the unhappy Savage charged him with. But Savage was condemned to die ; and notwithstanding most powerful interest was made with the court to save him, his fate for

a considerable time hung in suspense. Meanwhile Bullock, looking upon the author as a man who was no more, had his play got up with all the strength of the company, and announced to the public in the bills as a piece of his own. It was performed, and met with a very flattering reception. The town was amazed, and well it might, to find so much sterling merit in a play avowedly written by the author of a Match in Newgate, and some other Bartholomew drolls of equal wit and humour; nor was it till some years after this impudent imposture that the public was acquainted with the real father of the thriving child. Bullock, taking advantage of poor Savage's needy circumstances, found means to silence him, and not expose the deception; and we find that the comedy of Woman's a Riddle (the play in question), though

it has visited the press several times, still retains the name of Mr. Christopher Bullock as its author.

The parties being dead that were concerned in this transaction, we shall say no more on the subject. But what ought to be said of the supposed author of a famous piece, called, *The British Freeholder*? Let ground-ivy bind the brows of the adventurous knight Jackson ;

Who, could we believe himself, would tell us,
He is the first of all Apollo's fellows.

The real author, a reverend son of Cadwallader, had more generosity than to put in his claim to any share of the vast applause with which his patriotic play, announced as that of Jackson, was received in Britain and Ireland. While this doughty performance was in rehearsal at Capel-street theatre in Dublin, unluckily for poor Jackson, the

poet, and performer of the hero, a gentleman who had perused it at the worthy Welch parson's own house in North Wales, wickedly let the cat out of the bag, and Jackson was hereafter justly afraid of announcing a repetition of it, after the night of his own benefit, the only trial it had in Dublin.

It soon after raised its head once more in London (on a benefit night), at which period the manager's authority to expunge trash good-naturedly sleeps, and I was witness to this tragedy's being received with repeated bursts of Hah! hah! hah's! He! he! he's! and Ho! ho! ho's!

It made its third and fourth struggle in Edinburgh, where that judicious audience sent it to the bottomless gulph of damnation, under the following mortifying circumstances. Jackson, the then manager, and supposed author,

not listening to their liberal mode of disapprobation, expressed in silent contempt, actually advertised it for a second night, under the unblushing puff direct—"that it was received with universal approbation."

This so irritated the public, that on the evening of its second performance the avenues of the theatre were crowded, not with auditors, but with a thousand hand-bills, containing only the following extract from Churchill's *Rosciad* :—

“ By nature form'd in her perversest mood,
With no one requisite of art endued,
Next Jackson came—observe that settled glare,
Which better speaks a puppet than a player;
List to that voice—did ever Discord hear
Sounds so well fitted to her untun'd ear?
When to enforce some very tender part,
The right-hand sleeps by instinct on the heart,
His soul, of every other thought bereft,
Is anxious only where to place the left.

He sobs and pants to soothe his weeping spouse ;
 To soothe his weeping mother, turns, and bows.
 Awkward, embarrass'd, stiff, without the skill
 Of moving gracefully, or standing still ;
 One leg, as if suspicious of his brother,
 Desirous seems to run away from t'other."

The indignation of the public was superior to their curiosity, and they left the benches that night the sole arbiters of its merit—

" Stage poets, 'tis their hard yet common hap,
 Break out like thunder, tho' without a clap."

John Lineger Owens was the man in Dublin who charged him with this literary plagiarism ;

" Saying ——— Sure
 Next to perform, 'tis glorious to procure."

Jackson changed his countenance (" *demurely meek, insipidly serene,*") and with furious nasal tone exclaimed—" You say, sir, I am a literary thief?" Owens, like Grumio, humorously and signi-

ficantly appealed to the company with out-stretched arms—"Error in bill! Ladies and gentlemen! Error in the bill! I said—An illiterate thief."—The laugh which seized every one like electricity, drove Jackson (using a vulgar phrase) out of the room. As an actor, his first appearance in that line was in Edinburgh, under the management of Love, in the character of Hamlet. After many vain efforts there, he visited London, where the treasurer Pritchard one day jocularly asked him, when paying him his small salary, "if he was not ashamed to earn that trifling sum under false pretences?" Such like hints, and the drudgery of the theatre only falling to his lot, the curtain soon dropt upon his hopes in the metropolis, and he escaped with the afore-related punishment, or lashes of satire from Churchill.

At the period of Jackson's suit with Kemble in Edinburgh, 1793, the following Pasquinade was written and handed about privately; 'tis now for the public.

A LATE MANAGER'S CREED.*

Whomsoever shall open a theatre in Edinburgh, it is necessary before all things, that he shall in good faith hold the patent; which patent so holden, if the manager becomes bankrupt, shall not be secreted, but conveyed by him complete and undefiled to his creditors, otherwise the said manager shall perish everlastingly.

And the strength of the patent is this—that although a private grant, it is not necessary it should pass the seal of Scotland according to law.

* It is requested that this will be considered as not insinuating the slightest ridicule of the article of which it is a humorous parody.

And although the present patent (my ignorance of its validity being satisfied in my faith) is in the joint names of the Duke of Hamilton and Mr. Dundas ; yet are there not two patentees, but one patentee ; and their power is devisable and not co-equal. Mr. Dundas can create a manager ; the Duke of Hamilton can create a manager : yet there are not two managers, but one manager.

I confess the manager is eternal, even when his management is incomprehensible.

So that in all things aforesaid, the manager may be incomprehensible, the performers incomprehensible, and the prompter incomprehensible ; and yet there are not three incomprehensibles, but one incomprehensible, and that is the manager.

Furthermore it is necessary to the manager's eternal management, that he

should not only give the outward and visible sign of good management, by paying his tradesmen, but also the inward and spiritual one, by paying his performers.

For the performers are not only superior to the manager, as touching their consequence ; but the manager very much inferior to the performers when he *touches* their salaries.

For although he be manager, and actor, he is but manager only.

Manager, not by conversion from the patentees into the management, but by cunning in paying the fees for procuring the said patent.

Manager altogether ; by confusion of substance ; and by drawing good management to his own sense, without having a sense of good management.

I have lately descended into a hell of a situation ; but did promise to *Play-*

fair, to rise again and take my station on the right-hand of the public, who will be judges both of the good and the bad manager. They have called upon me to give an account of my management, and this is my belief, unless a man manage faithfully, he cannot manage long.

Confusion be to *law*, as it was in the beginning, is now, and ever shall be.

INEXPLICABLE.

When Jackson's affairs in Scotland began to grow desperate, Mrs. Jackson, who valued herself much upon being an able financier, hit upon a scheme, which she thought could not fail of raising his tottering credit, and in all probability procure a sum of money, that, properly disbursed, would for some time stop the mouths of some of the most vociferous creditors. One

morning, at a very early hour, she sent for her then prompter, Mr. Sparks, a man whom she thought, from his easy belief, would circulate any tale she might think proper to communicate. Her summons was obeyed, and the prompter made his appearance, and found the lady in a state of melancholy dejection. After the usual formalities, such as enquiries after her health, when she had heard from Mr. J—n, &c., he was desired to take a seat. Calling every affectation of pathos into her countenance, (for this lady has been generally accounted a much better actress off the stage than on it,) she then told him, she had just received a letter which contained the melancholy tidings of her aunt's death, a relation who had ever acted to her as a parent, and whose memory would be ever impressed on her mind, and her affection and

regard for her indelible. Condolements being passed, the prompter proceeded to business, and begged to know what had occasioned his early summons? Mrs. J—n replied, “that as she considered him to be one of her’s and her dear Mr. J—’s most particular friends, she had sent for him to request his advice, and then informed him, that the same letter that had brought her the woeful news of her aunt’s decease, likewise informed her, that her tender and affectionate relative had, by will, bequeathed her the sum of ten thousand pounds. In Mr. Jackson’s absence, she added, she wished to consult those whom she most respected, and who, she was convinced, most regarded her, as to the manner in which she could to the most advantage dispose of this so sudden and immense accumulation of wealth.”

The prompter hesitated some time before he made any reply : he was not so easy of belief as she imagined ; nor did he in his own mind give credit to one syllable of all she had been saying. However, he affected a surprize and joy upon the occasion, and told her, “ that though he most sincerely regretted the death of her worthy aunt, he could not help rejoicing and congratulating her upon this unexpected acquisition of fortune ; he lamented the absence of her husband, who could best advise her upon this occasion, but was certain her own good sense would well supply his place.”

She then told him, that she had been weighing the matter in her mind, and that, as poor dear Mr. Jackson’s affairs were (from the deficiency of the theatrical receipts, the heavy engagements he had entered into, and his own ho-

nesty of principle, having already disbursed amongst his creditors the last shilling he possessed) in rather a deranged state, she had some thoughts of giving him five thousand pounds. That having four children, it was her intention to settle upon each one thousand, which, with the accumulated interest, would render them independant upon their arrival at a certain age ; and that, as it was impossible for mortals to foresee into futurity, that she might avoid the accidental vicissitudes of life, with the odd thousand she meant to purchase an annuity for herself." The prompter congratulated her upon the excellent disposal she had determined to make of her property, commended her generosity to her husband, and bowing to the great lady, he withdrew. He happened to meet upon the stairs with Mr. Wilson, and asked him, was

any thing particular the matter, that he (Wilson) was so hastily sent for? The man in office immediately conjectured the business ; but feigning ignorance said, he knew of nothing very particular : he, however, waited till Wilson came away. They then compared notes, and found both their errands was to the same end ; and perceiving Mr. Bland, sen. making his approaches towards the lady's dwelling, they guessed his business was of the same kind, nor were they deceived. The old gentleman quickly joined them, and being of a passionate disposition, swore, " by heaven, it was too preposterous for the woman to attempt to impose such an absurd lie upon him ; that there was an aunt, he did believe, but who, if dead, had it not in her power to have bequeathed five pounds, let alone the ten thousand : " her intention was thus easily understood, but it

failed of the effect. Her three worthy friends kept too close the secret which she wished to have promulgated, and the ten thousand pounds remains where she found it, *in nubibus*.

Mrs. Jackson was an actress, in many instances, not devoid of merit ; and had her wish been to be useful, instead of eminent, she might have filled a certain line of acting with much credit to herself. Her attempt to over-step these bounds caused her to be considered by the audience of Edinburgh as a clog to their amusements, and the means of preventing performers of more distinguished abilities from being engaged at the theatre.

From these circumstances she was frequently insulted in her different performances, and with her husband, who was in the same predicament, obliged to retire, at least till opportunity might

offer to steal her on again without danger of disapprobation. This was attempted about four years ago, but it proved unsuccessful ; yet she persisted almost throughout the whole season. One night she thought proper to have herself announced for the character of Juliet—Mr. Fennel was the Romeo ; it was the season before his unfortunate dispute with the town. At the rehearsal in the morning she desired that the musicians should attend behind the scenes at night, that a sprightly strain might announce the arrival of the County Paris : she was obeyed ; but the musicians, ignorant of what kind of tune should be played, were only told, something sprightly ; their cue was the entrance of old Capulet, the Friar, and Paris, immediately after Juliet's supposed death. They entered ; and the fiddlers, who are not in general possessed

of the finest feelings, struck up the “Black Joke;” this set the house in an uproar of laughter, to which they were before but too well inclined, nor could their risibility be composed for the whole night after.

Actors, to whatever theatre they belong, have generally a peculiar mode of expressing or naming that mark of disapprobation in an audience, so well known by the term of *hissing*. By some it is said the *goose* is in the house, others term it the large *fowl*; the *Roman bird* is frequented adopted, and in short every theatre has its own particular phrase, for what every actor acknowledges the most disagreeable note that can vibrate in his hearing. In Edinburgh a short time ago it was christened anew, and the following circumstance was the occasion of it. Mr. Wilson, a very great favourite (and de-

servedly so) of the Edinburgh audience, was performing the part of the Governor in the Chapter of Accidents; in the scene where he comes to visit Bridget, who he apprehends to be his daughter, he finds a book upon the table in her apartment; and upon opening it the title page presented him with the Memoirs of Fanny Meadows. This he read aloud: but the audience conceived it to be *Fanny Hill*, a book from which their delicacy averted, and they expressed very great disapprobation, though at their favourite performer, for the liberty which they thought he had taken. An explanation, however, took place immediately, and restored him to their good graces; but ever since that time, in the Edinburgh theatre, disapprobation is marked by the termination of *Fanny Hill*. In consequence of this, a circumstance of a

whimsical nature occurred a short time afterwards. Mr. Jackson (who was manager) was well known to be particularly happy in the getting up of a pantomime, or any entertainment in which his great skill or taste might be exemplified in the decorations or disposition of the scenery. In order to gratify this his predominant passion, after having passed the summer in London, and having attended the different exhibitions of the celebrated pantomime entertainment of the Bastile at Astley's, Hughes's, &c. he returned to Edinburgh full of the idea of surpassing every thing that he had seen at the before-mentioned places. His carpenter (for he employed but one) and a painter were set to work; and as he determined every thing should be according to his own taste, he superintended them daily; and having formed his

plan, and written out a plot for the guide of the performers, it was at length put into rehearsal, and about to be exhibited with the full strength of his company. Wilson was a patriotic fish-wife ; Woods was a half-starved prisoner ; Miss Fontenelle sung *Vivé la Nation* ; Mrs. Jackson distributed the national cockades ; and he himself was the meritorious grenadier that first fixed the standard of liberty upon the walls of despotism. When the piece was nearly ready for representation, at a night-rehearsal, when the theatre was lighted up, and the performers ready to go through their different parts with the same degree of exactness as if before the audience, Mr. Bland and Richard Sparks, who were the stock Harlequin and Clown of the theatre, thinking there was too much solemnity in the piece, began to play their usual

tricks, at which the other performers set up a hearty laugh. The manager, much offended at their want of sensibility, requested they would keep their buffoonery for some other occasion, "as he was determined there should be nothing *entertaining* in this pantomime from beginning to end;" and he most religiously kept his word, for a mass of more tiresome absurdity was never before exhibited to a rational audience. The actors well knew its fate; and that they might have some entertainment among themselves, a card was dispatched to the box-keeper, requesting that he would keep a box on the first night of the new pantomime, for Lady Fanny Hill. Being entirely ignorant of the jest, he immediately entered her ladyship's name for a side box. The night arrived, but this box remained empty: Jackson mentioned the circum-

stance to Wilson in the Green-room, but Dick with an air of gravity told him, he supposed her ladyship would not make her appearance till the pantomime began. Jackson was afterwards too much concerned to observe if the box was filled; and the deserved disapprobation his favourite Entertainment had met with, chagrined him to such a degree, that in expressing his resentment, he could not help execrating her ladyship for rudely sending to take a box, and afterwards not occupying it. But Wilson appeased his wrath against the lady, by assuring him, that though she might not be in that particular box, she was with a numerous train of her followers dispersed in different parts of the house; and he made no doubt but that her ladyship, and her friends, would attend every night the piece was exhibited.

MR. BLAND, SEN.

A gentleman descended of an ancient and respectable family, after various vicissitudes of fortune, at length took up his residence in Edinburgh, and determined to make the stage his profession ; and if a good figure, an excellent understanding, and a classical education, are sufficient titles to the favour of Melpomene or Thalia, they were claims to which he had undoubtedly some pretension. Yet still dame Nature had withheld something—He wanted humour for the *sock*, and pathos for the *buskin*, though he was not without his share of merit in some parts : but this was not sufficient ; his sensibility could not endure the idea of mediocrity ; he therefore turned his thoughts upon being useful in the interior business of the theatre, and never performed but

when called upon by the thinness of the company in Edinburgh, or upon their annual peregrinations during the summer months in the country. It is upon some of these excursions that I mean to take notice of a few of his peculiarities. He was exceedingly absent ; and any idea that for the moment possessed his imagination, took from him every thought of what more particularly concerned him. If in one of these reveries you chanced to meet him in the street, and asked him, how he did ? in all probability you would be out of sight, when he would turn about, take off his hat, and with a low bow, say, “ Very well, I thank you, sir.” From this circumstance it is no wonder if he frequently made mistakes upon the stage ; which were much heightened by his timidity when before an audience. He was once performing the character of

Polydore, in the Orphan, or Unhappy Marriage; and though very perfect at rehearsal, he was so much intimidated in the performance, that he stuck fast in the second or third speech, nor could all the aid of the prompter enable him to proceed; upon which, collecting himself as well as possible, he addressed the audience in the following manner:

“Ladies and gentlemen, I vow to Heaven, it is a very extraordinary matter that I cannot remember what I have to say: I knew every word of it this morning at rehearsal; and my wife knows that she held my part this morning as I lay in my bed, and found me as perfect as an angel.”

Another night, the play of the West Indian was announced, in which he had the character of Major O’Flaherty; but the audience were so few at the time of beginning, that it was thought

expedient to dismiss them, rather than incur a certain expence without the means of defraying it. Upon this occasion he was appointed to address the few that had come to see the performance; which he did, and dismissed them in the manner following :

“ Ladies and gentlemen, as there is not a soul in the house worth playing to, this play will be repeated to-morrow night.” His country (being an Irishman), or perhaps the character he was to have played that night, might have been the occasion of so evident a blunder. A year or two since, at Aberdeen, he played the part of Zedan in *Such Things Are*, and as it was a short part, and a tolerable good one, he resolved nothing should impede his getting through with it. He accordingly summoned up resolution, and determined to be perfect, and really was so. Previ-

ous, however, to his going on the stage, he boasted of his determination before some of the performers, amongst whom was his eldest son, who well knew his foible. The young man betted his father a bottle of wine that he would not get through without stopping; the old gentleman readily accepted of the wager, conscious that he was perfect, and resolute in his intrepidity: to be short, he proceeded, and to every appearance was about to win the bet, when his son, fearing the loss of the wine, called in a low tone of voice from the side-scene—"Father, you're out." This irritated poor Zedan, who, forgetting all propriety, turned quickly round, and cried out aloud—"You lie you puppy, I am not out yet." The laugh thus occasioned in the house, heightened Bland's confusion, increased his timidity, and made him forget whatever

else he should have said. Innumerable are the instances that could be recounted of his forgetfulness : and, though in an advanced stage of life, he still continues to be cheerful, gay, and affable ; with the grave, sedate ; with the lively, merry ; and though playful with the youth, respected by the aged ; and there are few at his time of life who enjoy a better constitution. He has a blunt plainness in his manner, which to those unacquainted with him may be construed into rudeness ; but no man understands true politeness better. To sum up the whole of his character in a few words, he is a brave, proud, generous, affable, liberal, friendly, honest, unthinking worthy man.

BLAND AND SHUTER.

Bland and Shuter were particularly intimate, though singularly contrasted

in point of character. Shuter, the comedian, was so great a favourite with the audience, that he could say any thing to them. One night there was a great and continued noise in the gallery, and a general cry of "Throw him over, throw him over, turn him out, &c." and which interrupted the action of the play for some time; Shuter walked forward with great gravity, signifying by gesture that he wished to speak—the cry of Throw him over was instantly changed to "Hear him! hear him!" A profound silence being obtained, he addressed the gallery as follows :

My good friends, how do you mean to end this
pother?

Does he come this way, or does he go t'other?

You must determine—let him go or stay,

Or we must give you nightcaps, not the play.

The pride of the Scotch was an in-

exhaustible source of humour both to Bland and Shuter. This pride, however, is not the least amiable trait in their characters : we have had many amongst ourselves in England, who have not been a whit less distinguished for this high-mindedness.

The late Duke of Devonshire, when one of the lords of the bedchamber, was lighting his present Majesty into an apartment ; he turned round and observed his Majesty was arm in arm with Lord Bute ; he instantly, in pique, asked the King, who he was lighting ? His Majesty signified to his Grace to proceed. When he entered the room, he hastily placed the candles on the table, and retired : this was followed the next morning by a resignation of all the places he held under government. I was telling this story to a gentleman of Edinburgh, who condemned

the conduct of the Duke, and expressed himself in great warmth, that he treated the King improperly ; upon which I instantly said, You remember, or must have heard of the dignified character of the great John, Duke of Argyle ; suppose he had been in the same situation as the Duke of Devonshire, and felt his pride hurt in the same manner, what would old Johnny have done, think you ? “ Oh ! mon, eh God—he’d have flung the candlesticks at the King’s heed.”

Ross.

Ross’s life was a comedy, where the whole business and plot was eating.

Breakfast the Prologue,

Dinner the Interlogue ;

Supper the Epilogue.

Ross one day requested his partner Bland to buy him the best cod he could find in the market. He accordingly

did so, and gave two shillings for it. Ross thought it too dear ; Bland took this in dudgeon, and carried away the cod ; but no sooner was his back turned, than Ross relented, thrust his head out of the window, crying, “ Bland, Bland, I’ll give you eighteen-pence for the head and shoulders.” “ No !” says the other, “ you shall not have an eye out of the head,” so made the fish wife follow him home with it.

Bland (who bore Ross a grudge for his intention after the first year of throwing the 700*l.* he had lent him for the purchase of the patent back again, without giving him any other consideration for his fourth share) published, some time after, a poem, entitled the *Edinburgh Rosciad* ; which was a strong invective against Ross’s abilities as a performer. Some lines of it were as follows :—

See where he moves, a cumb'rous beast
Drench'd with the syrups of the east ;
Like Behemoth he rolls along,
The mightiest monster of the throng :
Conceal'd in flesh his features lie,
And microscopic search defy :
In short, to sum his utmost skill,
You'll find him *vox præterea nil*, &c. &c.

The celebrated Fanny Murray, then Ross's wife, offered twenty guineas to any one in Edinburgh who would discover the author ; but honest Peter Williamson, who printed it, stood firm to his trust ; and it was never known but by surmise from the Latin phrase it contained, which Ross had heard Bland employ upon some former occasion. However, this incident in the end occasioned Bland the loss of the patent, for Ross never would agree to let him have it, though he had often offered him much higher terms than Jackson procured it for afterwards.

When Ross first arrived in Edinburgh, he seemed to take more delight in frequenting the fish-market (the cheapness of which pleased him much) than in attending his business at the theatre. He once, through indolence, suffered a stocking weaver to attempt the part of Hastings in the tragedy of Jane Shore; the young man (who spoke the part in broad Scotch) no sooner began to be hissed, than he ran off the stage, went to the dressing-room, threw off Ross's cloaths, and made his escape out of the house as fast as he could. A messenger was immediately dispatched to Ross, at his house on the Castle-hill, to desire him to come and finish the part, which he had often played; but rather than quit his bottle, he sent word to the prompter to cut out all Hastings's act, and begin with the following one, which was accord-

ingly done, and it passed off that night almost imperceptibly ; but the censure that ensued upon talking of it next day, rendered Ross unpopular as a manager ever after.

STERLING, THE FISHMONGER.

Digges, in order to bring a house, had suffered a Mr. Sterling, a fishmonger, (a person well known in Edinburgh,) to play the part of Iago in Othello. The only bar to this young man's theatrical abilities was his dialect. In the course of the play, when he came to say, " I'll let down the pegs that make this music ;" the pronunciation of which is the same in Scotch as in English dialect : thinking there should be some difference, he happened to say *pigs*, instead of *pegs* ; upon which an arch rogue in the gallery cried out

Collar Hadies.* This produced a general laugh, and he never attempted the stage again.

MRS. BENNET,

Managress and Authoress.

She is the daughter of Mr. Evans, a grocer on the Back, Bristol, (who was a native of Merthertidwell, in Glamorganshire,) where this lady was born. She married one Bennet, a tanner at Brecknock. Many domestic occurrences, which would ill become me to relate, I shall pass over; distinguished characters are not to be judged by common rules, but I will not demonstrate any given position at the expence of a lady's feelings.

We find her some time back in the occupation of a slop-seller, in Wych-

* A common street-cry in Edinburgh for fish, which in London we call Haddock.

street, St. Clement's, London ; after that, in a chandler's shop in the Borough, where Admiral Pye one day accidentally sheltered himself from a shower of rain ; her polite attention to the old gentleman so won upon him, that in a little time she was elevated to the post of his housekeeper, at Tooting in Surrey.

She minc'd his meat, and made his bed,
And warm'd it too, sometimes, 'tis said.

This situation she occupied for many years, till the following accident caused a separation. The Admiral was a man of great gallantry, and, wishing to conceal from her an amour he had with a Miss Louisa Ellis, gave out, that he was going to attend at St. James's about a week or ten days, and should then return to Tooting ; where Mrs. Bennet, Mrs. Esten, and all her young family, resided.

The Tooting party had ordered the carriage at a fixed hour to take them to the play in London; they were to return that night to supper, with company that were to meet them at the play. The newspaper of the day being brought to Mrs. Esten, while under the hands of her hair-dresser, she was surprised into fits by the following paragraph :

“ Yesterday Admiral Pye dropped down dead in a fit of apoplexy, at his house in Suffolk-street, Middlesex-hospital.” As soon as the parties had a little recovered, the carriage was ordered immediately to convey Mrs. Bennet and Mrs. Esten to Suffolk-street. I must here notice, that Mr. Esten was in London, and on reading the paragraph early in the morning repaired to Suffolk-street, and found the Admiral perfectly well, but very busy in writing

letters to all his friends on the occasion, whom he wished to relieve from anxiety on his account. The Admiral, on seeing Mr. Esten, said, “ Oh ! I am glad you are come ; here, I have written a letter to Mrs. Bennet, for God’s sake take a horse, haste to Tooting, and relieve her distress.” On Clapham-common Mr. Esten met the chaise with Mrs. Bennet and his wife—Mrs. Bennet exclaimed, “ Oh ! Esten ! Esten ! is he gone ? ” “ No, ma’am, here is a letter from him.” She kissed, and rapturously opened it ; after reading it with great emotion she seemed thunder-struck : the whole was explained, by her referring to the superscription, which was to Miss Louisa Ellis. The Admiral, in his hurry and confusion, had given Mr. Esten the wrong letter. The event caused the horses heads to be turned round, and she never after

saw the Admiral. He soon after sent down for two chests of plate, but left a handsome quantity there for Mrs. Bennet's use. There was a little obstruction to removing the two chests of plate ; but when she found the Admiral had given orders for a peace-officer to attend, it was quietly removed.

The Admiral died in three weeks after, and left her a comfortable legacy, with his house in Suffolk-street. This was substantially certifying to the world that he never held her in other sort than his *house-keeper*. She had for a long time been mistress of a workhouse, but latterly held it by deputy.

We now see her seated at the head of the Edinburgh theatre, through the interest of her daughter, Mrs. Esten. But Mrs. Bennet did not consider, that the practice of uncontrouled severity in the mistress of a workhouse over pa-

rish paupers, was not the rule of conduct to be exercised over the sons and daughters of the sock and buskin. In short, her management in 1793 was so generally condemned, added to the taper finance of her treasury, that by help of the mail coach, which took her up at Haddington, seventeen miles from Edinburgh, where she had previously conveyed herself, she at length abdicated her government.

In 1793, Mrs. Bennet and Mr. Bowden's disputes came before the public in the following anonymous shape: one thousand of them were distributed previous to the commencing of the evening's entertainment. This was obviously intended to produce a riot in favour of Bowden, but it failed of its intended effect, and Mr. Bowden was suffered to enjoy his bottle and bird as unnoticed as ever by the public.

“ TO THE PUBLIC.

“ When Mrs. Billington’s engagement was first announced, Mr. Bowden was announced at the same time; hence the public were certainly led to expect that she was to be supported by that capital singer: instead of which an attempt has been made to support her by Mr. Meadows, who may be a very worthy man, but certainly is in a very unhappy predicament as a performer, it being perfectly obvious on Monday last, that he could neither sing nor say. In this situation it is highly proper the pit should exercise their undoubted right of interfering; and this night they should call for Mr. Williamson the manager, and demand the reasons why the public is so shamefully insulted, and why Mr. Bowden is not suffered to appear, who is still in Edinburgh, and

ready to renew his engagement on the same terms which were originally offered to him."

"Edinburgh, Feb. 27, 1793."

Whoever wrote the foregoing anonymous libel against poor Meadows was afraid to own it, for I will take upon me to say, could he have fixed upon the author of it, he would have lengthened his nose. At any rate, Mr. Meadows is a very honest, industrious man, struggling to support a very large and meritorious family. I know an instance of his philanthropy to a gentleman in distress, that carried him so far as to distress himself, but he nobly persevered, till the gentleman got an appointment in the West-Indies, from whence he has shewn his abundant gratitude to Meadows, by not only remitting every pecuniary advance to him, but settling on him all he may be worth,

should he not live to come home. The gentleman possesses at this moment large property, and a very high situation in one of the West India islands.

Although Mr. Meadows does not understand the science of music equal to Mr. Bowden, yet, let them meet in a room among a select party, I am mistaken if the toe of the peasant would not gall the kibe of the courtier. If Meadows is called upon for a song, he heightens the satisfaction he gives you in singing, by his prompt compliance ; not so in Bowden, I have known him absolutely to refuse, and that in a very awkward and blunt manner. The following anecdote will show how much his conduct was resented at a musical society in Bath, where, as Incledon and Bowden happened to be *en passant*, a member of the society was requested to give them an invitation to dinner. They

attended ; after many songs had been sung by others, the company in general called upon Mr. Bowden ; he was not in the humour. Request upon request was repeated ; no, Bowden could not sing—a general pique was the consequence, and Mr. Incledon was called upon, who instantly complied, and obliged and charmed the whole company. The president immediately ordered all to fill their glasses, and gave Mr. Incledon's health. Now the reader must understand, that there was a law in the society, that if any member drank the health of any one present, they should forfeit one shilling. In this instance they thought they could not pay a higher compliment to Mr. Incledon : the waiter was called in to collect the forfeits, which were his perquisites, and this event furnished him with a new suit of clothes, as there were about ninety-five persons in the room.

But to return to Edinburgh. Soon after the anonymous hand-bills, Mr. Bowden came forward in the following erudite address

TO THE PUBLIC.

“ The respect for the public, which my situation as a public performer in a particular manner demands, made me desirous not to obtrude upon their notice any differences of a private nature with Mrs. Esten. The same respect that formerly kept me silent, now demands that I should give the public every satisfaction as to these differences ; and justice to myself also demands, that I should obviate what was on Thursday night last asserted from the stage :—
‘ That I had deserted my engagement, and had gone to a court of law for redress of imaginary and unfounded grievances.’

“ After a good deal of correspondence, I engaged to perform as principal singer at the theatres of Edinburgh and Glasgow. The terms of my engagement are particularly mentioned in a letter to Mrs. Bennet, mother of Mrs. Esten, to be afterwards noticed. The performances were to commence at Glasgow upon the 5th of December last ; and I regulated my other engagements, so as to be there before that day. I afterwards received intimation, that Mrs. Esten’s company were not then to go to Glasgow, and was desired to be in Edinburgh before the 5th of January, when the theatre was to open. I arrived on the 4th, and having remained till the 30th of January, having been in my apprehension very ill treated by Mrs. Esten’s managers, I on that day wrote to Mrs. Bennet a letter ; of which I beg leave to lay a copy before the public, as

it speaks out my sentiments on the subject, and will enable them to judge how far, upon that occasion, I acted with moderation and propriety.

“ ‘MADAM, *Jan. 30, 1793.*

“ ‘It will be extremely disagreeable for me to have any dispute with you with regard to the terms of my engagement. I wish to avoid it, and I now write to you, in the hopes that you will see the justice of what I ask you, and comply with my request.

“ ‘You know that I was engaged to perform eighteen nights with Mrs. Billington, in Edinburgh and Glasgow, at 10*l.* sterling a night, and was besides to have a benefit at each of these places, at which Mrs. Billington was to perform, and for which I was to pay 45*l.* sterling for expences. I was besides to play two nights for Mrs. Billington and

Mr. Weischell's benefit, without receiving any allowance. In consequence of the instructions I received, I arrived in Edinburgh on the 4th of January to fulfil my engagement. Upon coming here, I was surprized to find that Mrs. Billington and Mr. Weischell were not to perform ; but as I did not wish to have any dispute upon the subject, I made no objection to fulfilling my engagement without them. Their not being here was, however, in many respects a matter of much regret and loss to me.

“ “ I expected, that upon your part you would have been equally disposed to have fulfilled the terms of my engagement. You must know it to be an established rule in every theatre, that when a performer is engaged by the night, he is entitled to perform these nights successively, if he inclines to it.

Accordingly Mr. Williamson (deputy manager for Mrs. Esten), in a letter to me, dated the 18th day of September last, says, ‘From the number of succeeding nights, the amount must prove an object of consequence.’ And in your letter to me the 5th of October, you say nearly the same thing, when you tell me, that I was to perform nine nights at Glasgow, between the 5th of December and the 1st of January. If I am right in what I allege as to the usage of theatres, which is confirmed by Mr. Williamson’s and your own letter, and which every person acquainted with theatres must know to be the case, I certainly have great reason to complain of your conduct towards me. I have now been in Edinburgh twenty-six days, and have only performed three times, and I do not know when I may make my next appearance. It is

of consequence to me to know when my engagement shall end, that I may make my other arrangements. It surely cannot be your intention to keep me here during the whole season, otherwise, in place of receiving 10l. a night, I may be reduced to about 8l. a week, which is the sum I have received from you since I came here, or you may reduce me a great deal lower. When I was last winter here with Mr. Kemble, upon an engagement similar to my present one, I played seven times within a fortnight, and drew 300l. sterling. My present engagement, especially in the way that you choose to understand it, puts me in a very different situation indeed.

“ ‘ But, inadam, as I am anxious to avoid a dispute with you, I will agree to refer the terms of my engagement to any gentleman of character whom

you may be pleased to name. Let him settle the nights on which I am to perform, and any other differences betwixt us, and I shall be satisfied with his decision. If you do not agree to this proposal, you must excuse me for taking such other steps as I shall be advised to follow. And am, &c.’

“After this letter was sent, hints were given me that Mrs. Bennet was willing to enter into a submission; and, that there might be no difficulty as to the arbiter to be named, I enclosed a list of eighteen gentlemen, lawyers, and writers to the signet, of the first respectability, to any one of whom I was willing to submit every thing. Upon this Mrs. Bennet declared, ‘that she would submit to no person in Scotland, but offered to refer the matter to the decision of Mr. Harris of Covent-garden theatre, and Mr. Kemble of Drury-lane

theatre ; and if they differed in opinion, to Mr. Shield, the celebrated composer, as umpire.’

“ I had all along conceived, that it was for the advantage of both parties to have the matter immediately settled in one way or another. I had, indeed, no objections to any of the gentlemen named by Mrs. Bennet ; but I considered that the very agreeing to the reference proposed by her, was deciding the cause against myself. I contended that my engagement was to be completed on successive nights. She maintained that it was to be completed within such time as she thought proper.

“ To agree to a reference to gentlemen in London, was to agree to a delay for at least some weeks ; and this was giving up the point. I therefore rejected the proposal, and laid a state of the case before a gentleman of the first legal

abilities, by whose advice I have been regulated in my subsequent conduct.

“ After the above letter had been sent to Mrs. Bennet, I was requested to perform on Monday the 4th day of February following. The answer I sent Mr. Williamson to this request, was in these words :

“ ‘ SIR,

“ ‘ Notwithstanding the treatment I have received from Mrs. Bennet and Mr. Williamson, I again offered to submit the matter to any gentleman of character, and declared, that if this was refused, I should be under the necessity of applying for legal redress. To this no answer having been made, I presented a petition to the sheriff of the county of Edinburgh, stating the circumstances on which I founded my claim, and praying that his lordship would decide that my engagement was

to perform on successive nights, and that I should be held to have performed on the nights on which the theatre had been opened, and should be entitled to my salary: or, that his lordship should reserve a claim of damages against Mrs. Esten, on account of my having been so long detained, without being allowed to perform, and should declare, that the nights of my engagement, which had not then been performed, should be successive nights from that date, &c. This petition was served on Mrs. Bennet and Mr. Williamson upon the 11th of February, and on that very evening I performed.

“ ‘ On the Saturday following I went to the theatre to receive my salary for my performance on the Monday preceding, but was told, that Mrs. Bennet had given orders that I should not be paid.

“ ‘The process before the sheriff went on; on various pretences delays were obtained, and to this hour no answer has been made to my petition. I all along wished to perform, and declared my willingness to that purpose. But I was never asked to do so; and the first time that I heard of Mrs. Billington performing here, I was also informed, that the characters in the different pieces in which she was to appear, were cast without me. This was a severe mortification. I had formerly performed with Mrs. Billington in London, and should have been proud of the honour of appearing along with that celebrated actress before the audience in Edinburgh, to whom I consider myself under many obligations; but however strong my wishes were for accomplishing this object, I had no opportunity of indulging them.

“ ‘ I have already said, that on various pretences, delays were obtained in the process before the sheriff. During all the time of its dependence not one word was said of a compromise, until yesterday, that a letter was received by my solicitor from Mrs. Esten’s solicitor, offering to submit the matter to one of her own counsel, and to any other gentleman, to be named by me. This proposal was however made too late ; I was advised to reject it, as a measure calculated for further delay ; and I could not see any reason for preventing the sheriff from judging in the cause, which in the present situation of affairs might be done at less expence, and in less time, than would be necessary to obtain a judgment from arbiters. I did not know at the time, that any thing had passed on the subject in the theatre on the preceding evening, but it has

since occurred to me, that this offer was intended to prevent me from removing from the minds of the public the unfavourable impressions, which must have been made by the statement then given of my conduct.

“ ‘ With regard to the terms of my engagement, I shall only beg leave to say, that I was engaged to perform along with Mrs. Billington. Although the articles are general, they must surely be explained (if there is any occasion for an explanation of so clear a point) by the terms of Mrs. Billington’s engagement—she is engaged to perform *eight nights within* a fortnight. There cannot, therefore, remain a doubt, that my engagement must be explained to be of the same nature ; and that the demand I made, that the nights on which I performed should be successive nights, is not only founded on the understood

rules of the theatre, but on the undoubted understanding of parties, expressed by Mr. Williamson in his letter of the 18th of September, virtually acknowledged by Mrs. Bennet, in her letter of the 5th of October, and positively confirmed by the express terms of Mrs. Billington's engagement.

“ ‘ I must request the indulgence of the public, for having taken up so much of their time. It was late last night before I heard of what had passed in the theatre on Thursday evening ; and my anxiety to remove any impressions to my prejudice upon the public mind, has induced me to lay before them this hasty production.

“ ‘ The public will judge in this state of facts, whether Mrs. Esten's managers were founded in their assertion, that, I had deserted my engagement, and had gone to a court of law for redress

of unfounded and imaginary grievances.
W. BOWDEN.'

"Edinburgh, March 2, 1793."

How this affair has terminated I know not; but the only consolation he received under Mrs. Bennet's management was, the very partial opinion entertained of him by a young lady in the rival company, who, on being rallied one morning at rehearsal, romantically exclaimed—

I know not where the enchantment lies,
Whether it be the magic of his eyes,
Or lip, or cheek, or brow—but I suppose
The conjuration chiefly in his nose.

Mr. Bowden was originally a rider to a very capital house in Manchester; by the measure of his scenic abilities, the public are now enabled to estimate how far he was justified in his severe criticisms at all times upon stage professors. I believe I may hazard this opinion,

that he is better calculated to sing a man out of an order for ten pounds worth of goods, than to contrive to get ten pounds a night for singing. The following I think is a pleasant story respecting him and a brother rider, Mr. Masters, who has also lately turned actor. Meeting one night in their travels, the conversation over the bottle turned on the extensive business carried on by their respective houses. Bowden, zealous to prove the superiority of his own, enumerated many extraordinary instances, and finally wound up his climax with saying, "that the business of his house was so extensive, that in their *correspondence only* it cost them 150l. yearly in the article of *ink*."

Masters replied, "Why Bowden, do you advance that as a proof of your superiority to our house?"—"I do."

"Poo, poo, man," says Masters,

“ why, we save that sum yearly in our house in that very article, by only *omitting* the *dots* to the *i*'s, and the strokes to the *t*'s.”

In 1792, a very extraordinary modest young man came across Mr. Kemble in the middle of his season, teased him into consent that he should make a trial on the stage ; and after two ineffectual efforts, and experiencing much good nature from the manager, and indulgence from the public, this bird of passage flew off, leaving behind him the following curious document of *egotism*. There are in it fifty-six *I*'s, to which the reader is requested to add the *Me*'s and the *My*'s, making in the whole one hundred *Ego*'s—but let this flying Argus speak for himself.

“ TO THE PUBLIC.

“ *I* being impressed with the most lively sense of gratitude to that audience before whom *I* have had the honour of twice performing the character of Oroonoko, and *I* being highly flattered by the uncommon applause which *I* experienced attended *my* exertions, *I* cannot think of quitting a city where *I* have been so favourably received, without *I* acquaint the public with the reasons of *my* departure.

“ The moment *I* determined to embrace the profession of an actor, *I* was advised by *my* friends in London to make *my* entrée before an Edinburgh audience. *I* readily agreed to this proposition, *I* having long entertained a high opinion of the candour and critical judgment of the inhabitants of this city, from whose decision *I* could at

once discover, whether *I* had mistaken inclination for talent. On *my* arrival here, *I* immediately waited upon Mr. Kemble, who received *me* with uncommon politeness ; and after some conversation, it was agreed between *I* and him, that *I* should make *my* first appearance in the character of Oroonoko. As *I* am so fortunate as to enjoy the comforts of independence, *I* was thereby enabled to prepare a dress suitable to *my* part, which for beauty and elegance, as *I* have since been told, far surpassed any thing of the kind ever seen in this country. On the first night of *my* performance, *I* was received in a manner infinitely superior to what *I* could possibly have expected ; but *my* powers being much depressed by that diffidence which almost ever attends a first appearance, *I* was eager to make *my* second attempt. *I* was again received

with that success, which plainly bespoke the entire satisfaction of *my* most respectable auditory. Since *my* last performance, *I* have been honoured with a number of messages from some of the most enlightened characters in this city, to know what time *I* should again perform, as the report of *my* talents was so exceedingly favourable, as to make them desirous of being present at *my* third appearance. To these gentlemen, who have thus flattered *me* by their notice and approbation, *I* consider *myself* bound to inform them of the cause that prevents *my* appearing again as a public character in this city, a place where *I* have experienced such uncommon marks of attention, and where so much respect has been paid to *me*.

“ On the night of *my* first performance *I* was complimented by the manager in terms highly flattering to *my*

vanity, or that of any young actor, as *he* went so far as to declare, that *he* foresaw *my* talents would entitle *me* to a most conspicuous place in the list of dramatic performers. On *my* second appearance these encomiums were repeated from all parties. *I* was thus naturally led to believe that *my* friends were not mistaken in the opinion they had formed of *my* talents. Soon after *I* requested Mr. Kemble would permit *me* to perform a new character, and *I* mentioned to him the part of Romeo; *I* conceiving it by no means unreasonable, that as *I* did not receive, or look for any recompence for *my* services, *I* should have the power of chusing two or three of *my* first characters; a greater number was not requested by *me*. To this requisition Mr. Kemble, with all that haughtiness congenial to his nature, gave *me* a direct refusal, and for

what reasons best known to himself, insisted that *I* should perform the trifling part of Henry, in the Comedy of Next Door Neighbours, a line of acting to which *I* had never turned *my* attention, and which, if *I* believe the sentiments of *my* friends, is entirely foreign to the bent of *my* talents. However, at all events *I* was determined, whatever might have been the consequence, to play the character, insignificant as it really is ; and *I* had absolutely made *myself* almost perfect in the part, when *I* was suddenly attacked with a severe cold, and thereby *I* was compelled to send *my* apology to the theatre.

“ On the moment of *my* recovery, *I* waited on the manager ; and as the part of ‘ Henry ’ was then filled by another performer, *I* repeated *my* inclination of making *my* next appearance in the character of ‘ Romeo,’ on any night *he*

might choose to appoint. To *my* great astonishment, *I* was received with all that affectation of consequence, which *I* have since been told, is often practised by the dramatic sovereign of the North. This ungentleman-like conduct was followed by an entire refusal of every thing *I* proposed ; and as *I* found *my* feelings rather hurt by this managerial importance, *I* immediately quitted the company of a man, whose want of good manners reminded *me* of his original insignificance. Thus situated, *I* have given up all *my* hopes, at least for the present, of being able to appear again before an audience, whose great judgment, and liberality of decision, have long placed them among the foremost in dramatic criticism.

“ Before *I* conclude this *my* address, *I* cannot but express the great satisfaction *I* feel at *my* being honoured with

the approbation of an Edinburgh audience. Sanctioned as *I* am with their applause, *I* may now boldly step forward and embrace a profession, without having the least doubt of *my* future success; and ‘whatever part of the world *I* may be next thrown upon,’ it will be *my* pride to acknowledge the great attention and politeness, *I* have received during *my* short stay in this metropolis, from the acquaintance of some of its most leading and respectable inhabitants, whose obedient servant *I* am,

“ W. FREDERICK.”

“ *No. 37, North Bridge-street,*
“ *Wednesday, March 14, 1792.*”

To this humorous specimen of vanity I shall add one more Bartholomew piece, and then conclude my History of the Scotch Stage, with a specimen of my own folly, in answer to the attack of a field-preacher in Aberdeen.

“ NEW THEATRE.

Last Night but One of the Company's
performing here this Season.

For the BENEFIT of Mr. BELL.

On Monday Evening, April 29, 1793,
will be presented an Entertainment
called, The

AGREEABLE CONSISTENCY,

Composed of Materials miscellaneous.

The whole to conclude with

A splendid FIRE-WORK,

Representing

The Sun, Moon, and Stars,

Dancing a Highland Reel to a New
Tune, called,

M'GILPIN'S RANT.

“ Mr. Bell, for the sake of novelty,
most respectfully offers to his friends
and the public an account of his vari-
ous performances

IN VERSE.

“ ’Tis humbly hop’d the audience thinks it right
To see Jack Tar return’d in health to-night ;
They’ll be inform’d their foes were made to tremble
In a Duet by Bell and Mrs. Kemble.
And to sustain true mirth, he has no fears,
When Mr. Mahon on the stage appears :
The audience of this night will ne’er forget,
The sounds that issue from his clarionet,
Which will contribute to support their glee,
With compositions ta’en from Langolee.
But since the life of whim is variation,
They’ll hear from Mistress Swendall imitation.
’Tis understood they will not think it teasing,
To hear once more, “ O thou wert born for pleas-
ing.”

Rob Furguson’s account of Hallow Fair,
Hugh Sparks’s manner hits off to a hair.
Our bill is not complete, nor never can,
Unless Lee Lewes gives his Drunken Man.
Thus, Part the First will make the Playhouse ring,
By ending with a new “ God save the King.”
Kindly has Mistress Kemble undertaken
To play the part of Lovemore’s wife, forsaken ;
Who treats his scorn with manners risible,
Aided by agents, all invisible.

A scene from O'Keefe's farce next strikes the view,

Between fair Cowslip and her lover true.

But Lingo comes, to whom she cries, "Odds daisy!
I'll pull your wig," which drives the Butler crazy.

To all concern'd, now be it understood

'They're next presented with old Birnham Wood;

And after that, they may both see and hear

The courage rouz'd of Woods's Volunteer;

Who in a song, will tell the audience how

The French were beat, with British row, dow, dow.

'The season serving, take it in the nick,

And see again, repeated Trick on Trick.

Who ever wants a place, Tom Bell is glad

To say, of Mr. Gibb it may be had;

To purchase tickets shou'd they be inclin'd,

West end Canal-street, there they will him find.

'That Bell means well is all he has to plead,

Pray then be kind, and let his plan succeed,

And take, for once, the good-will for the deed." }

Can the stage be more degraded?
Indeed, the dispute at that period between Jackson and Kemble, prevented the latter permitting any colloquial matter, on which account only was

this monster, the *Polydrama*, admitted ; so that the Scotch stage may plead an excuse for frivolity and nonsense, which those of Drury-lane and Covent-garden cannot.

I published the following in Aberdeen, in January 1794.

“ THE STAGE and the PULPIT,
The PLAYER and the PREACHER,
Or, a Serio-Comic Answer
To Mr. KILHAM, a Methodist Preacher
in Aberdeen ;
By CHARLES LEE LEWES, Comedian.

“ ADVERTISEMENT.

“ In the following hasty defence of the stage, I am indebted for some thoughts to Mr. Fennel, who a few years ago laudably undertook a periodical publication in London, exposing the abuses of the stage ; in which he did not veil the corruptions of managers and their

deputies, charging them with *foul playing*; the first before the curtain, and the latter behind the scenes. Manager and deputy manager may be properly called Balaam and Balak: for “Balaam taught Balak to cast a stumbling-block before the children of Israel.”

“SANCTIFIED SIR,

“I have read your fanatical thoughts respecting theatres, and those who attend them; and though it is generally admitted that your rhapsody deserves not a serious answer, and that you was properly ridiculed by the late representation of the comedy of the Hypocrite; yet I must oppose your assuming to yourself and your infatuated tribe, that *you and your sect* only walk in the school of virtue, and that no moral rectitude can be derived from the stage, or its followers. Men of unbred minds, not accustomed with the world, but in the

habit of admiring themselves, think there is nothing beside them worthy of regard. They look not on themselves to correct and reform, but on others to despise and censure ! They think, that like Gideon's fleece, ' they have suck'd up all the dew of heaven ;' when perhaps it may be found, they rather answer the other part of the miracle, and are drier than their neighbours.

“ Lord Gardenstone has wisely observed, that ‘ man is more a *credulous* than a *rational* animal.’ I admit you believe what you have written.

“ If, sir, your reading extends further than your homilies, call to mind the days of old, review the years of each generation ; ask your fathers and they will inform you, your elders and they will tell you, at what period to fix the ill use and abuse of the stage, from which, if you have any candour, you

will feel the impropriety of your present ill-timed attack.

“ ‘The stage now stands upon the rock of *innocence*, mounted with moral batteries, out of the reach of fanaticism. The real consequence, and use of the stage, was never known till the reformation. At that period arose a Shakespeare and a Jonson, and the stage has since arrived to such a climax of moral perfection, as to claim the power of exciting *virtue*, and the privilege of rewarding it.

“ The drama of the present day has in general a moral tendency ; if it fascinates and allures, it is not at the expence of intellectual purity.

“ The laugh that was raised the other night in the theatre, by the representation of the Hypocrite, may probably induce you to read that admirable piece of satire. How far the public were right

in applying the characters of Cant-well or Maw-worm, I will not contend, but you threw the first stone ; and hence (to use a Scotch phrase for throwing stones), this bickering between us. Let me tell you, sir, that an hypocrite has a very long part to act, and if his memory fails but in one scene, his farce is spoiled : indeed, his hazards are so great, that it is as little prudent, as it is honest, to set up the trade, especially in an age when *piety* itself is at so low a price, that its counterfeit cannot pass for much. If you will read the play of the Hypocrite, you will find that the satirist has laudably punished the vice and folly of *hypocrisy*. Vice and folly first created the satirist, who, it may be observed, has proved more beneficial to the correction of a state than a legislator. The legislator may frame laws sufficiently wise and judicious to

check and controul villainy, without the power of impeding the progress of vice and folly. For law has no power to punish us for the vices which debilitate our constitution, destroy our substance, or degrade our character.

“ Nor can religion, all-powerful and divine as she is, entirely extirpate vice, and still less controul folly. Her two principles—alluring to *virtue*, by promise of reward, and dissuading from *vice*, by threats of punishment—extend their influence no further than on those whose dispositions are susceptible of these impressions : but there are numbers among mankind, whose conduct and opinions are beyond her power, and who are so weak in their resolutions, as not to be capable of breaking the fetters of habit and prepossession.

“ It is from this cause, that nature has implanted in us a sense which tends

to correct our disposition, where law and religion seem to have no power. This sense is a *desire of public estimation*, which not only tends to give mankind perfection in every art and science, but also to render our personal character respectable.

“It is this susceptibility of shame and infamy which gives the stage its efficacy. There is not an individual in the community that is not influenced by its dictates. It actuates the prince and the beggar, the peasant and the politician, the labourer and the scholar, the mechanic and the soldier, the player and the divine.

“You should therefore, sir, not be surprised, that mankind are so impressed by stage-representations, where the object of satire is to describe vice and folly. Mr. Ross, sir, an actor well known in this kingdom, by the follow-

ing letter proves, that there is no incentive so powerful to abandon pernicious customs, as the sense of present and future disgrace.

“ ‘ Letter from David Ross, esq. late Patentee of the Theatre-royal in Edinburgh, containing a remarkable incident that occurred in consequence of the representation of *George Barnwell*.

“ ‘ DEAR SIR,

“ ‘ Our conversation of yesterday evening made such an impression on my mind, that I cannot avoid requesting you to publish the following anecdotes. They relate so immediately to Mr. Palmer’s plan, and to the commercial and mercantile interests of the metropolis, that I think it would be unjust to conceal them.

“ ‘ In the year 1752, during the Christmas holidays, I played George

Barnwell, and the late Mrs. Pritchard played Millwood. Doctor Barrowby, physician to St. Bartholomew's-hospital, told me he was sent for by a young gentleman in Great St. Helen's, apprentice to a very capital merchant. He found him very ill with a slow fever, a heavy hammer pulse, that no medicine could touch—the nurse told him he sighed at times so very heavily, that she was sure something lay heavy on his mind. The doctor sent every one out of the room, and told his patient, he was sure there was something that oppressed his mind, and lay so heavy on his spirits, that it would be in vain to order him medicine, unless he would open his mind freely. After much solicitation on the part of the doctor, the youth confessed there was something lay heavy at his heart; but that he would sooner die than divulge it, as it

must be his ruin if it were known. The doctor assured him, if he would make him his confidante, he would by every means in his power serve him ; and that the secret, if he desired it, should remain so to all the world, but to those who might be necessary to relieve him. After much conversation, he told the doctor, he was the second son to a gentleman of good fortune in Hertfordshire ; that he had made an improper acquaintance with a kept mistress of a captain of an Indiaman then abroad ; that he was within a year of being out of his time, and had been entrusted with cash, draughts, and notes, which he had made free with to the amount of two hundred pounds. That going two or three nights before to Drury-lane, to see Ross and Mrs. Pritchard, in their characters of George Barnwell and Millwood, he was so

forcibly struck, that he had not enjoyed a moment's peace since, and wished to die to avoid the shame he saw hanging over him. The doctor asked where his father was? He replied, he expected him there every moment, as he was sent for by his master upon his being taken so very ill. The doctor desired the young gentleman to make himself perfectly easy, as he would undertake his father should make all right; and to get his patient in a promising way, assured him, if his father made the least hesitation, he should have the money of him. The father soon arrived. The doctor took him into another room, and after explaining the whole cause of his son's illness, begged him to save the honour of his family, and the life of his son. The father, with tears in his eyes, gave him a thousand thanks, said he would step to his banker

and bring the money. While the father was gone, Dr. Barrowby went to his patient, and told him every thing would be settled in a few minutes, to his ease and satisfaction ; that his father was gone to his banker for the money, and would soon return with peace and forgiveness, and never mention, or even think of it more. What is very extraordinary, the doctor told me, that in a few minutes after he communicated this news to his patient, upon feeling his pulse, without the help of any medicine, he was quite another creature. The father returned with notes to the amount of 200*l.* which he put into his son's hands—they wept, kissed, embraced. The son soon recovered, and lived to be a very eminent merchant. Dr. Barrowby never told me the name, but the story he mentioned often in the Green-room of Drury-lane theatre;

and after telling it one night when I was standing by, he said to me—‘ You have done some good in your profession, more perhaps than many a clergyman who preached last Sunday,’ for the patient told the doctor, the play raised such horror and contrition in his soul, that he would, if it would please God to raise a friend to extricate him out of that distress, dedicate the rest of his life to religion and virtue. Though I never knew his name, or saw him to my knowledge, I had for nine or ten years at my benefit, a note sealed up with ten guineas, and these words—‘ A tribute of gratitude from one who was highly obliged, and saved from ruin, by seeing Mr. Ross’s performance of Barnwell.’

I am, dear Sir, yours truly,
DAVID ROSS.’

‘ *Hampstead, Aug. 20, 1787.*’

“ Here was a happy genius in the author ! in one and the same moment to display the enormity, and correct the corrupt exercise of vice !

“ This was the effect of that implanted sense in our nature, without the aid of law or religion ; and this sense is derived from God. I am not one of those who would put such a cheat upon my understanding, as to conclude there is no future account. But to return from this digression to Mr. Ross. If you possess candour, you will allow this dramatic effect Mr. Ross speaks of, to be an incontrovertible proof of the moral efficacy of stage-representation. There, where neither law nor religion could extend their awe and authority, the stage so wielded the scourge of disgrace, as to effect an immediate reformation. Those who are subject to the dominion of depraved

habits, the stage you see, sir, can awaken to the practice of reform; for where religion cannot convince, and some are so depraved, that even the light of religion burns in vain, the stage affords effectually her assistance. It reforms the drunkard by exposing to the view of himself and the world the brutality of his actions and person, when under the influence of intoxication. The stage reforms the inordinate actions of many who are not awed by the belief of future rewards and punishments; by exposing them to infamy during their present existence, they are awakened to a practice of reformation from the poignant sense of being the derision and contempt of all their connections. If you have never read the play of Hamlet, sir, let me point out this passage to you—

— — — — — “ I have heard
That guilty creatures sitting at a play,
Have, by the very cunning of the scene,
Been struck so to the soul, that presently
‘They have proclaim’d their malefactions :
For murder, tho’ it have no tongue, will speak
With most miraculous organ.”

Again,

“ There is a play to-night before the King ;
One scene of it comes near the circumstance
Which I have told thee of my father’s death !
I pr’ythee, when thou seest that act on foot,
Even with the very comment of thy soul,
Observe my uncle : if his occulted guilt
Does not itself unkennel in one speech,
It is a damned ghost that we have seen.”

By this, sir, you see the power of *stage effect* : but that out of the question ; if in the common occurrences of life we know any one to speak ill of us, we should fly home to our own conscience, and examine the heart ; if guilty, it is a just correction ; if not, it is a fair instruction ; and by making use of both,

we distil honey out of gall, and out of an open enemy create a secret friend. I can almost, I think, anticipate the answer your stoical sourness may make to this, ‘ Confine the stage to gloomy precept and example, nor let the laugh or the jest obtrude.’ God has not sure been more rigid to our minds than to our bodies ; and as he has not so devoted the one to toil, but that he allows us some time to exercise them in recreation, as well as labours ; so doubtless he indulges the same relaxation to our minds, which are not always to be screwed up to rigid formality, but allowed to descend to that operation of wit, which instructs and entertains.

“ Perhaps, sir, in *your moral theatre*, or meeting-house, if you was to sprinkle a few *lauds* among your anathema’s, the ear would not be so grated as it is with grunts, and groans, every man

contributing his mite to the doleful harmony. In this, I think, you are a bad manager, for you know that the *lauds* make up a very great part of that excellent magazine of devotion, the Book of Psalms. But I may be mistaken ; you may perhaps tire in your discourse, and so find refreshment in the people's grunts and groans, as a collar of bells cheers up a string of pack-horses. The follies of mankind, sir, are to be encountered, as well as their grosser vices ; and the stage has not been unsuccessful in this, by combating folly with the proper weapons of burlesque and ridicule. I have frequently observed young people jested and laughed out of their fooleries, who were deaf to reason, and proof against threatenings and correction : so, sir, has the stage produced the like effect in people of more advanced age. I will

maintain the moral use of stage *satire*. Every age has produced great masters of this art. Æsop and all the mythologists have practised it with great dexterity and success, making the brutish part of the creation read lectures of philosophy to rational creatures, and an *ass* to rebuke a man. When the world was over-run with Polytheism, and the profane legends of their fabulous gods, there was none fitter to expose and ridicule their follies than Lucian in his dialogues. Aristophanes censured the pedantry and superstition of Socrates; Horace, Persius, Martial, and Juvenal, the luxury and profligacy of the Romans; Boileau and Moliere, the levity of the French; Cervantes, the romantic pride and madness of the Spaniards; when knight errantry became epidemical, Don Quixote applied the cure; and Dorset, Oldham, Swift,

Addison, and Foote, ridiculed with success the variety of vice, folly, and luxury, which we have imported from our extensive commerce and intercourse with other nations. We should consequently revere the stage, and correct ourselves ; we should not avoid it as the detector, but as the friendly monitor ; if it speaks severe truths, we should condemn our own conduct which gives it the power.

“ If men will be ridiculous, why should the stage be denied the freedom of laughing at them ; and if deaf to reason, what other method remains, but ridicule ? It would be vain in me, sir, and a great mark of indiscretion to attack the singular, and distinguishing fopperies of your bigotry with the heavy armour of syllogisms, and citations from antiquity. Hypochondriac diseases must be treated with laughing

and good humour, and not with expostulating or syllogizing; any other mode of attack would be much of a piece with the conduct of a general, who should raise a battery of ordnance to level a mole-hill, which might more easily be done by trampling on it.

“ I shall now, Mr. K—, give the retort courteous to your abuse of actors in general, and then with the reply churlish take my leave of you *in secula seculorum*.

“ The three great pillars of our constitution are not more necessary to its existence, than are the oratorical professions to the welfare of the people; nor should the equilibrium of the former less zealously be watched, than the religion, honour, and respectability of the latter. The pulpit and the bar are not respectively more serviceable to the religion and safety of the people,

than the stage might be to the collective advantages of religion, safety, and morality. The noblest situations of humanity may be prostituted to the vilest purposes ; but the censure of justice falls not on the situation, but the man. Where is the profession, however noble in itself, that is not by individual members rendered subservient to the very vices it was formed to prevent ? The law, originally instituted for the protection of our liberties, properties, and lives, is but too often perverted to the invasion of our most sacred rights. The pulpit, which ought to be the seat of virtue and humility, is by many made the residence of vice, and pride. But this reflects disgrace only on the unworthy members, and not on the profession itself. Noblemen have been degraded, kings have abused their power, and the archangel revolted

from his God : but who shall tell me that, therefore, nobility is not respectable, the crown is not the seat of honour, nor the Deity the fountain of all goodness? The founder of our glorious religion, who taught and practised the purest maxims, experienced even in the select band of his apostles, a breach of every theological virtue. Faith, hope, and charity, were severally invaded. St. Thomas disbelieved, St. Peter denied, and Judas betrayed his Lord; but shall any one tell me that man is infallible?

“ No deviation from rectitude, therefore, on the part of a member of any rank, or profession, can dim the lustre of the original dignity on which such rank or profession has been enthroned.

“ Whether, in my warm attachment to the stage and its professors, I have in this little treatise been able to con-

vince you, that there is honour and dignity attached to the profession, I am totally indifferent about. I know that, with you, I have to combat prejudice unfounded in reason.

“ But if to the unprejudiced mind I have in any degree proved that the consequences of a well-conducted theatre are beneficial to mankind, I shall always glory in this feeble attempt of rescuing an honourable profession from the censure of illiberal opinion, which has proceeded only from indiscriminate observation, and from placing in one scale the DRAMA and the abuse of it.

“ From your ingenuity the other evening (for though a player I constantly attend you),—I say, sir, from your ingenuity in previously putting a handful of bawbees into the plate, when you are pleased to appoint it a two hours station at the door of your meet-

ing, as a hint to *first-comers-in* (a good trick that), I am afraid it is the *crust*, and not the *cause*, you preach for. When, in any country, the established mode and gravity of preaching suffers by the cunning or ignorance of self-created *holders-forth*, it is then time to hold forth to public ridicule every *field-preaching mountebank* and *hypocritical text-monger*. Methodist preachers are, in fact, professors of tragedy ; for what is it else but tragedy to traduce a set of weak people into a meeting-house, or under a tree, to work upon the poverty of their feelings, to terrify them by a denunciation of vengeance, to magnify every minute error into a frightful crime, to pilfer them, in the name of the Lord, of what little money and understanding they possess ; and still worse, to deprive them for ever of cheerfulness : then, in imitation of a Dutch toy in a snuff-box,

the preacher, after having made a merry-andrew of himself, hands about the plate, collects all the silver and copper he can fleece his congregation out of, who go home melancholy and poor, and leave him behind to chuckle at their folly and credulity.

“ It is not your misfortune, but your design, and of every one I have heard in your hypocritical line, in general, to destroy that harmony which is between the Law and the Gospel : you urge certain words and certain texts in scripture so far, that at last you draw blood instead of comfort. The most natural and effectual way of promoting the gospel is, by following its own rules and precepts of meekness and moderation : they will command men’s minds more than passion, sourness, or severity.

“ ‘ The soft pillow sooner breaks the flint, than the hardest marble.’ When

therefore you would convince men of error by the strength of truth, you should do it with tenderness, and not substitute your own violent and furious passion for the zeal of God and religion. True zeal is a heavenly and gentle flame, and never calls for fire from Heaven to consume those who agree not with us in all points and circumstances. It is much of the nature of that kind of lightning (philosophers tell us) which melts the sword within, but never singeth the scabbard.

“ Pray, sir, let me ask you, if, in your late publication against innocent and rational amusements, DUNDEE DIP was not concerned with you. I mean your brother preacher, the tallow-chandler of Dundee, your enlightened colleague, who, though he pretends not to care a *rush* about the play-house, yet so far dips into it as to illumine the Dun-

dee theatre every night ; however you or he may affect to find fault with stage expressions, can either of you justify the following methodistical metaphor from the pulpit ? ‘ Don’t be afraid to ask mercy of the Lord ; for his mercy is like a buttock of beef, cut and come again.’ For shame, for shame, Dip ! snuff off such excrescences. Oh, Mr. Kilham ! kill’em altogether. And yet I have heard Dip,

‘ Whose force does lie
In grunt, and groan, and white of eye,’

enliven a very dull oration with appropriate metaphors, thus :

“ ‘ BRETHREN,

“ ‘ I trust, what I have said will prevent you from galloping on in the high road to destruction ; let us not even canter nor trot after vanities, but walk in the path of truth, always remem-

bering that we are nothing more than *walking clay candlesticks*; but most especially let us not forget that we carry in us a light, not a *wick*-ed light, but a divine light. Faith must be your save-all; and to prevent that light going out with a *stink*, you must apply your good works as an extinguisher.'

“ Well said, Dundee Dip! I give you credit for that, which is more than you would give us for your candles. I am inclined to think, that Dip's affected aversion to plays and players was not a little heightened by an innocent stratagem I made use of to get him into the theatre at Dundee. I should not tell the following story, if it had not the super-addition of an accidental fitness grounded upon his universal contempt of the stage: though in the continual receipt of our money, he indulged himself in the habit of abusing

us, confessing he had never seen a play in his life. In this he resembled the mole that complained the sun was dark, because, dwelling under ground, he saw not his splendour.

“ I told him one morning, seriously, that I was afraid we should be obliged to change our tallow-chandler. ‘ Why so, sir ? ’ — ‘ Because, sir, our stage-keeper has found out that many of your candles, when burnt half-way, or a little more, will burn no longer. ’ — ‘ Sir, you must be mistaken. ’ — ‘ Indeed I am not ; for if you will attend the theatre any night, you may yourself witness how we are imposed upon. ’

“ The credit of his shop was at stake, and he so far unbent as the next evening to steal into the gallery, where he skulked the play of Douglas out. The play ended, he condescended to visit us behind the scenes. ‘ Sir, ’ he vehc-

mently exclaimed, ‘you have charged me most unjustly.’—‘With nought but truth, sir.’—‘Sir, my candles have been burning now three hours; and I tell you, sir, they will burn to the sockets.’—‘Who denies it?’—‘Whodenies it? why, sir, did not you charge me with making candles, that when they had burnt half-way, would not burn any *longer*.’—‘I did, and maintain it still, Dip : Dip, when your candles are burnt half-way, they all burn *shorter*.’ Feeling the jest, he curled the muscles of his sanctified phiz, and left the scenes in dudgeon.

“A few words more. The actors, whom in your extreme civility you have been pleased to style rogues, recommend to your perusal every sessional record of civil justice. The Newgate Calendar in particular will evince a number of *methodist preachers*, whom the leaden heels of the law at length

overtook, and with her iron hand dragged them to the gallows, there to atone with their lives for base unmanly actions, highway robberies, house-breaking, and forgery. The chief roguery actors are guilty of is, now and then cheating the public out of their applause, and by assuming characters sometimes not suited to their abilities : in this it may be said, they *obtain money under false pretences* ; and these merry rogues tell you, sir, that in *your line of acting*, he who has only gained the title of an *itinerant preacher*, may assure himself that that of *the rogue* is not far off.* You are *seemingly* honest ; but

* There is no place in the world (comparatively speaking) where there are more sectaries in religion than at Glasgow: here Whitfield pitched his tent, and truly speaking, it was first in the “tented field ;” but he was *tilted* at last.

In his preaching, he particularly excelled in

do not be alarmed when I tell you, that I have known *seeming* honesty rewarded with the punishment of a wooden-ruff, or pillory, where I have seen lank hairs so gilded and thumped with dirt and rotten eggs, that *seeming* honesty has really given up the ghost. The pillory, indeed, is a purgation you need not dread ; for, as you are not a janizary of papacy, but a dissenting common soldier of Christ (what pity you are not a commissioned officer !), it is im-

metaphor : and as Shuter has often told me, he did not know a better actor. I give the following instance of it.

This excellent methodistical performer fixed his own benefit thus. He mounted the pulpit, and invoked the Deity to open the hearts of men to diffuse acts of charity.

In the year 1742, preaching at Glasgow, he expressed himself in the following words :—
“ Lord, dung us with Jesus Christ, that we may bring forth much fruit meet for thee.”

possible you can touch at *purgatory*—you must therefore to Heaven in a *direct line*. As Foote said to the Duchess of Kingston, ‘That you may never want the *benefit of the clergy*, in every emergency,’ is the sincere wish of

CHARLES LEE LEWES.”

“*Aberdeen, Jan. 4, 1794.*”

EDITOR'S POSTSCRIPT.

TO THE PUBLIC.

THE peculiar situation in which I am placed with respect to these Memoirs, the deference which I owe to the public, and the anxiety I feel relative to the reception of my late father's labours, oblige me to offer some apology, for not being able to lay before

them a connected detail of such theatrical incidents as occurred to the author subsequent to the period of his engagements in London. The following Play-bill will, it is hoped, in some degree satisfy the reader, and save me much pain in recording circumstances which might tend rather to wound my feelings, than gratify his curiosity.

The Public are most respectfully informed by

MR. LEE LEWES, Comedian,

That in consideration of seven years ill health, and consequent embarrassments, the Proprietor of Covent-garden Theatre has kindly given him authority to announce

A PLAY and ENTERTAINMENTS
at the Theatre,

On Friday, the 24th of June, 1803.

Mrs. Jordan has most cheerfully consented to give her assistance on that night, in

A FAVOURITE COMEDY.

The best performers that can be procured, *with his own humble efforts*, will fill up the rest of the Drama.

To Mr. Harris, and every actor and actress who have so liberally promised him their aid, he embraces this opportunity of returning his most grateful
THANKS.

End of the Play,

A MONOLOGUE

(Written for the occasion by Mr. T. Dibdin),

In which Mr. Lee Lewes will deliver

HIS ULTIMATUM.

* * Further particulars in future Bills
and Advertisements.

At present he indulges a hope, that

after forty years professional struggle, with a continued disappointment, *this*, HIS LAST APPEAL, will meet with approbation and encouragement.

Tickets and Places to be taken of Mr. Brandon, at the Box-office in Hart-street.

This appeal was not made in vain : the town did not forget their old favourite. He was received by the audience with the loudest plaudits, and retired with more substantial tokens of their esteem than mere applause.

Upon this his last benefit, he performed Lissardo in the Wonder. Mrs. Jordan performed Violante; Mrs. Litchfield recited Alexander's Feast ; and Mr. Townsend gave his imitations. Mr. Lewes delivered the following address, written by Mr. T. Dibdin, between the Play and Farce :

Ye liberal friends to the Arts and the Muses,
Whose sanction prosperity's sun-shine diffuses ;
Whose fiat, by every party respected,
Adds fame to known merit and cheers the neglected !
Ye patrons of one, who, in times scarcely ended,
Has oft by your plaudits and smiles been befriended ;
For past favours bestow'd, and for present bestowing,
The tribute accept of a heart that's o'erflowing ;
Accept his best thanks, and believe them sincere,
'Tho' in language far short of his gratitude here.
Since here in my duty I nightly was found,
And nightly my efforts with kindness were crown'd,
Some years have elaps'd—yet amid all the changes
Which whirligig fashion effects where she ranges,
One French mode remains—I have scarcely occasion
To say 'tis their fashion to talk of invasion.
They say they will come; and so long they have said it,
We might almost afford the assertion some credit,
If it were not, the picture they draw of our fear
Would lose all its colour in coming too near,
And their boasted attempt, to be barely effective,
Must be kept, as it always has been, in perspective.
And as France minds no promise, we all must allow
'Twould be breaking a custom to keep her word now.
Or suppose she did come and attack us, why then
'Their leader may boast of a troop of wise men ;
For he owns, when at Folly's main-top he has got 'em,
'Tis a hundred to one but they all find—the bottom.

Then he tells ye, to make with more ease his way over,
He'll build Lodi's bridge between Calais and Dover ;
'That our ships he'll destroy, and moreover, folks say,
He means to accomplish his plan in this way ;
With potent steam-engines the ocean he'll drain,
And leave all our ships on a dry sandy plain ;
And he'll do this, in hopes those French laurels to find
Where Britannia has plung'd them down time out of
mind.

But, whatever he says, or whate'er he may do,
We may equally scorn, to ourselves while we're true ;
And our quarrels with France, let foes how they will
state 'em,

Can only produce this most sure Ultimatum :
'That as we have prov'd, so we will prove again,
'The right of Britannia to govern the main ;
And Britons are ever resolv'd to a man,
'To let France take it from us, whenever she can.

My acquaintance with the professors of the drama being very limited, and having no other means of ascertaining a circumstantial account of my father's professional avocations, except through the medium of their communications, I have to regret the apparently abrupt conclusion of these dramatic Memoirs. Indeed, from the result of private cor-

respondence, and the casual information I have been able to obtain, it would but indifferently gratify the reader, were I to record the fortuitous events which clouded the last few remaining years of the author's chequered life. His sensibility had been severely wounded by the contumelious and repulsive behaviour he had experienced from tyrannic managers, and a series of unpropitious circumstances, which attended him through the progress of his professional career. His spirits were broken, and his powers evidently on the decline, by a melancholy concomitancy of mental iniquitude and bodily suffering, being liable to a periodical attack of an anasarcical complaint, which advanced from his legs to his thighs, and eventually brought the vital parts under its influence. Having taken lodgings at the

Middleton's Head, Sadler's Wells, for the benefit of his health, on the 22d of July, 1803, in the sixty-third year of his age, he supped with Mr. Townsend of Covent-garden Theatre, and some friends, apparently in his usual state of health and spirits ; and on the following morning was found dead in his bed. He was buried at St. James's Chapel, Pentonville, his funeral being attended by a few of his relatives and friends.

He was, unfortunately, not grown so old in misfortune, as to have outlived the remembrance of better days : he was not blessed with the science of oblivion—in the sunshine of prosperity he often contemplated the future ; and, alas ! too fondly associated with it more ideas of happiness than he found realised.

THE END.

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